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APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NORDELL INTERNATIONAL RESOURCES, LTD. Plaintiff-Counter-Defendant, v. TRITON INDONESIA, INC.; TRITON ENERGY CORPORATION; TRITON OIL (NZ) LTD., Defendants-Counter-Plaintiffs-Third Party Plaintiffs-Appellees. v. VERONEX RESOURCES LTD., Third-Party-Defendant-Appellant.	No. 92-55058 D.C. No. CV-90-6894-ER
NORDELL INTERNATIONAL RESOURCES, LTD., Plaintiff-Counter-Defendant-Appellant, v. TRITON INDONESIA, INC.; TRITON ENERGY CORPORATION; TRITON OIL (NZ) LTD. Defendants-Counter-Plaintiffs-Third Party Plaintiffs-Appellees.	No. 92-55433 D.C. No. CV-90-6894-ER

NORDELL INTERNATIONAL RESOURCES, LTD., Plaintiff-Counter-Defendant, VERONEX RESOURCES LTD., Third-Party-Defendant-Appellant, v. TRITON INDONESIA, INC.; TRITON ENERGY CORPORATION; TRITON OIL (NZ) LTD.	No. 92-55434 D.C. No. CV-90-6894-ER **MEMORANDUM*** (Filed July 23, 1993)

Appeal from the United States District Court
for the Central District of California
Edward Rafeedie, District Judge, Presiding

Argued and Submitted April 6, 1993
Pasadena, California

Before: **WALLACE**, Chief Judge; **O'SCANNLAIN** and **FERNANDEZ**, Circuit Judges.

We must consider issues concerning the extent of an arbitration panel's authority in resolving a contractual dispute.

I

In 1988, appellant Nordell International Resources, Ltd. ("Nordell") entered into a contract with appellee Triton Indonesia, Inc., a newly created, wholly-owned subsidiary of appellees Triton Energy Corporation and

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*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Triton Oil Limited (collectively "Triton"). The contract consisted of two integrally related agreements, the Farm-out Agreement and the Joint Operating Agreement, which provided for the assignment to Triton of an undivided participating interest of 60% in an oil production field in Sumatra, Indonesia. Veronex Resources, Ltd. ("Veronex"), the parent corporation of Nordell, ratified the agreement.

Pursuant to the contract, Triton became the operator of the project with full responsibility for the technical, operational, managerial, financial and accounting aspects of the project. Triton was obligated to invest a disputed amount into the project, either $21 million or $24 million, after which Nordell and Triton were to contribute their proportionate share of the operating costs.

In November 1989, Nordell and Triton began to have disagreements over Triton's accounting practices, and Nordell demanded arbitration. During this time, Nordell refused to pay the cash calls demanded by Triton for the operation of the project. Nordell brought several claims against Triton, and Triton counterclaimed. Each party requested a complete forfeiture of the other party's interest in the project, indicating that the relationship had deteriorated to such a degree that working together had become impossible.

The arbitration proceeding was held for three weeks in Singapore in October 1990 before a three-member panel from the American Arbitration Association. The arbitrators found in favor of Triton, and ordered Nordell to pay Triton approximately $1 million for cash calls and

damages. The arbitrators entered the award against Veronex as well, finding that Veronex was the alter ego of Nordell. Finally, the arbitrators redistributed the interests of Nordell and Triton in the project.

In December 1990, Nordell filed a motion to vacate the arbitration award in the Central District of California. In January 1991, Triton filed a motion to confirm the award against Nordell and Veronex. In February 1991, the district court denied Nordell's motion to vacate and stayed Triton's motion to confirm pending remand of three specific issues for clarification by the arbitration panel, one of which was the reasons for granting relief against Veronex.

In August 1991, the arbitration panel issued its clarification. The district court confirmed the award in its entirety. Nordell appeals, arguing that the arbitration panel (1) exceeded its authority by disregarding the plain language of the contract; (2) exceeded its authority by relying on fraudulent financial data in crafting the award; (3) exceeded its authority by redistributing the interests of the parties in the project; and (4) engaged in misconduct and was partial to Triton. Veronex also appeals, arguing that the arbitration panel did not have the authority to enter a judgment against it.

II

The review of an arbitration award by a court is extremely limited. Section 10(a) of the Federal Arbitration Act provides that an award may be vacated only if one of the following conditions is met:

> (1) Where the award was procured by corruption, fraud or undue means.
>
> (2) Where there was evident partiality or corruption in the arbitrators, or either of them.
>
> (3) Where the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.
>
> (4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a). We have interpreted this section narrowly, holding that "confirmation is required even in the face of erroneous . . . misinterpretations of law." *French v. Merrill Lynch*, 784 F.2d 902, 906 (9th Cir. 1986) (citation omitted). "An arbitrator's decision must be upheld unless it is 'completely irrational' or it constitutes a 'manifest disregard of the law.' " *Id.* (citation omitted).

III

A

Nordell argues that the arbitrators disregarded the plain language of the contract and thus exceeded its authority under section 10(a)(4) of the Federal Arbitration Act.

A court has no authority to vacate an award solely because of an alleged error in contract interpretation. *Employers' Ins. of Wausau v. National Union Fire Ins. Co.*, 933 F.2d 1481, 1486 (9th Cir. 1991); *San Martine Companie*

de Navegacion S.A. v. Saguenay Terminals, Ltd., 293 F.2d 796, 800 (9th Cir. 1961); *see also Bernhardt v. Polygraphic Co. of America Inc.*, 350 U.S. 198, 203 n.4 (1956) ("[W]hether the arbitrators misconstrued a contract is not open to judicial review"). "[A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision." *United Paperworks Int'l Union v. Misco, Inc.*, 484 U.S. 29, 38 (1987). "The arbitrator may not ignore the plain language of the contract," *id.*, but, "if on its face, the award represents a plausible interpretation of the contract, judicial inquiry ceases and the award must be enforced." *George Day Constr. Co. v. United Bhd. of Carpenters & Joiners, Local 354*, 722 F.2d 1471, 1477 (9th Cir. 1984).

The disputed issue here is whether Triton had an obligation to make cash calls or joint interest billings ("JIBs") to itself. Each month, as operator of the project, Triton would prepare a statement estimating the costs and expenses for the coming month. Triton would then issue a "cash call" to Nordell , requesting its 40% share of the estimated expenses in cash, up front. At the end of the accounting period, Triton would issue JIBs accounting for the actual expenditures. Nordell contends that Triton had an obligation to issue cash calls to itself, and thus also contribute its share before the expenses came due.[1]

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[1] Triton does not dispute that it is responsible for 60% of the costs of operating the project. The disputed issue concerns only whether Triton is obligated to make cash calls on itself.

The arbitrators concluded that Triton had no obligation under the contract to issue cash calls to itself. Nordell argues that this conclusion disregards the plain language of section 7.4 of the Farmout Agreement and section 2(c) of the Joint Operating Agreement Annex (Accounting Procedures).

Section 7.4 of the Farmout Agreement provides:

> [E]ach party shall bear and pay its undivided participating interest share of all . . . costs and expenses under the [Joint Operating Agreement]

Section 2(c) of the Joint Operating Agreement Annex provides:

> The parties shall advance to the operator their share of the required funds.

Nordell argues that because section 2(c) uses the term "parties" and not "party," and because Nordell and Triton are the only two parties to the agreement, the contract requires both Nordell and Triton to advance the funds through cash calls. Nordell further argues that any other interpretation of those provisions is "implausible" and thus grounds for vacation.

Triton presented evidence of the following to the arbitrators:

(1) The parties did not intend to require Triton to make cash calls on itself. Instead, the parties agreed that Triton as operator would have the right to receive contributions from non-operators for the non-operators' share of expenses. Triton, as operator, would then have the obligation to pay 100% of the costs of the project as they were incurred.

(2) The term "parties" instead of "party" was used in section 2(c) because the parties contemplated that Nordell at some point might assign a portion of its participating interest to an outside investor.

(3) The custom and practice in the oil and gas industry was consistent with Triton's understanding of the contract. Under the typical Joint Operating Agreement in the oil and gas industry, the operator has the right to receive payment in advance of each non-operator's share of the costs upon demand, but the operator itself does not have to make the payments until the bills come due. The operator has no obligation to make cash calls on itself.

The arbitrators concluded that Triton had no obligation to make cash calls on itself. Viewed in light of Triton's arguments, this construction of the contract is a plausible interpretation of the contract provisions, and we must uphold it.[2]

B

Nordell argues that the arbitrators exceeded their authority by relying on fraudulent financial data in

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[2] In light of our acceptance of the arbitrators' interpretation of the contract, Nordell's argument that the arbitrators acted in manifest disregard of the law in concluding that Nordell breached the contract must also fail. Nordell argues that by not making cash calls, Triton breached the contract, which in turn relieved Nordell of its obligations to perform. Since Triton had no obligation to make cash calls on itself, however, Nordell breached the contract when it ceased making the cash calls. The arbitrators did not act in manifest disregard of the law of contracts in making this determination.

crafting the award, and that, accordingly, the award is irrational and must be vacated under section 10(a)(4) of the Arbitration Act.

Nordell presented much evidence to the arbitrators about the allegedly fraudulent accounting practices of Triton. The reliability of Triton's data was a hotly contested factual issue during the proceedings. By relying on the data in the face of allegation of fraud, the arbitrators implicitly made a factual finding that the data were reliable.

In arguing now that, as a matter of fact, the data were fraudulent, Nordell is asking this court to make a factual finding contrary to that made by the arbitrators. We "may not predicate reversal on the arbitration panel's erroneous findings of fact." *Employers Ins. of Wausau v. National Union Fire Ins. Co.*, 933 F.2d 1481, 1486 (9th Cir. 1991). Rather, we are "bound by the arbitrators' factual findings," *South East Atl. Shipping, Ltd. v. Garnac Grain Co.*, 356 F.2d 189, 192 (2d Cir. 1966), unless the award is based on findings wholly without support in the record. *Compare Amalgamated Meat Cutters v. Great W. Food Co.*, 712 F.2d 122, 123 (5th Cir. 1983) ("This court will not review the factual findings or merit determinations made in an arbitration award.") *and International Union of Elec. Radio v. Ingram Mfg.*, 715 F.2d 886, 890 (5th Cir. 1983) ("[a]bsent a showing of fraud or bias or prejudice (on the part of the arbitrators), the courts have no power to review findings of fact of arbitrator"), *cert. denied*, 466 U.S. 928 (1984) *with National Post Office Mailhandlers, Watchmen, Messengers and Group Leaders Div. v. United States Postal Serv.*, 751 F.2d 834 (6th Cir. 1985) (vacation proper where arbitrator based its holding on erroneous

finding that an employee had pleaded guilty to an offense *before* his employer terminated him when in fact he had pleaded guilty *after*; date of employee's termination and the date on which he pleaded guilty were clear from the record and not in dispute). The Third Circuit summarized the extremely deferential standard of review as follows:

> [R]eview of arbitrator's factual findings is not whether those findings were supported by the weight of the evidence or even whether they are clearly erroneous. All that is required is *some* support in the record. When the court finds some support, the inquiry is over.

Tanoma Minn. Co. v. Local Union No. 1269, UMWA, 896 F.2d 745, 748 (3d Cir. 1990) (emphasis added; citations omitted).

Triton points to testimony by several witnesses that Triton's accounting practices were lawful and reliable as support for the arbitrators' reliance on the disputed data. This testimony is enough to provide "some support" for the arbitrators' implicit finding that the data were reliable. Having found some support in the record, our inquiry is over and the arbitrators' implicit finding must stand.

That the finding was implicit, not explicit, is not important. Arbitrators are not required to make explicit factual findings, nor is an arbitrator's award entitled to less deference when its findings are not explicit. *See McKesson Corp. v. Local 150 IBT*, 969 F.2d 831, 833-34 (9th Cir. 1992); *Western Employers Ins. Co. v. Jefferies & Co.*, 958 F.2d 258, 261 (9th Cir. 1992). The Eighth Circuit rejected an argument similar to Nordell's in *Osceola County Rural Water Sys. v. Subsurfco*, 914 F.2d 1072 (8th Cir. 1990). In

that case, the district court found that the award in favor of Subsurfco violated public policy because the arbitrators ignored testimony that test results had been falsified. The Eighth Circuit reversed, holding:

> [A]rbitrators are not required to elaborate on the reasons in support of an award. There is nothing in the record to suggest that the arbitrators accepted as true the testimony . . . regarding the falsification of test results.

Id. at 1075. Here, similarly, the arbitrators were not required to explain the reasons for rejecting Nordell's allegations before the award is entitled to the deference outlined above.[3]

C

Nordell argues that the arbitration panel exceeded its authority under section 10(a)(4) by reforming the agreement between the parties. An arbitrator exceeds its authority when it decides issues not submitted to it or acts in manifest disregard of the law.

Here, both Nordell and Triton asked the arbitration panel, through the exercise of equitable powers, to redistribute the interests of the parties in the project. Throughout the arbitration proceedings, Nordell requested a "divorce" from Triton, arguing that the parties could no longer work together. Nordell emphatically argued that

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[3] Since we will not contravene the arbitrators' implicit factual finding that the data were reliable, we reject Nordell's contention that the arbitrators acted in manifest disregard of the law by ignoring the unclean hands doctrine.

the arbitrators had the power to redefine the roles of the parties and, in fact, argued that the arbitrators had the authority to order the complete forfeiture of Triton's interest in the project. In response to each party's request for equitable relief, the arbitrators made the following award:

> [I]n view of both parties' request for an adjustment of the interest of each in the project and in view of Nordell's demonstration of bad faith in not paying Cash Calls and incessant harassment of Triton's operations, Nordell's (and Veronex's) interest in the ENIM project . . . [will] be converted to a "net profits" interest in the project in the amount of five percent (5%) of the net profits realized each year from the project as determined in accordance with generally accepted accounting principles applied on a consistent basis.

Since the parties asked for the redistribution of their interests, granting that remedy was within the scope of submission. Moreover, ordering the particular remedy was within the broad equitable powers of the arbitrators. The agreement between Triton and Nordell expressly incorporated the Committee Rules of the American Arbitration Association. Rule 43 provides: "Scope of Award: The Arbitrator may grant any remedy or relief which the Arbitrator deems just and equitable within the scope of the agreement of the parties." *Todd Shipyards Corp. v. Cunard Line, Ltd.*, 943 F.2d 1056, 1062-63 (9th Cir. 1991) (quoting Rule 43). The contract contained provisions allowing forfeiture as a remedy for breach by either party; an award that adjusts the interests of the parties

but falls short of full forfeiture is "within the scope of the agreement of the parties."

Nordell argues that notwithstanding the general powers of arbitrators to enter equitable remedies, the specific remedy imposed here exceeded the powers of the arbitrators because it amounted to the imposition of punishment for the violation of an interim order that itself was beyond the powers of the arbitrators to enter. At the time the dispute arose, Nordell had stopped making cash call payments. After the arbitration began, Nordell asked the arbitrators to enter an interim order precluding Triton from issuing cash calls to Nordell during the pendency of the arbitration proceedings. The arbitrators refused to enter Nordell's requested order, and instead, issued an interim order requiring the parties to continue to fulfill their obligations under the contract "so as not to alter the status quo or position of any other party."[4] Nordell continued to refuse to make cash call payments after the order was entered. The arbitrators found that this amounted to a violation of the interim order.

Nordell argues that the issuance of the order was improper and that Nordell may not be penalized for the violation. Contrary to Nordell's assertions, however, it is

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[4] The full text of the relevant provision of the interim order is as follows:

> Each of the parties are [sic] ordered to take no actions to prejudice the interests of the other party or parties prior to the conclusion of the arbitration proceeding and each should fulfill its respective obligations and perform its duties under the agreements in existence or at issue so as not to alter the status quo or position of any other party.

not clear whether the arbitrators fashioned the remedy at issue here because Nordell had violated the order. It *is* clear, in contrast to Nordell's contention, that the violation of the interim order was not the *sole* reason for the imposition of the remedy. The arbitrators gave three reasons for the redistribution: (1) both parties had requested an adjustment of the interests; (2) Nordell had demonstrated bad faith in not paying the cash calls; and (3) Nordell had incessantly harassed Triton in its operations. We need not determine, however, precisely what effect that violation of the interim order had on the remedy, because the imposition of the interim order was, in fact, within the arbitrator's power.

Nordell argues that issuance of the interim order was improper for two reasons: first, the interim order violated the status quo and an arbitrator may issue interim relief only to maintain the status quo, and second, the order was unconstitutionally vague and thus imposing penalties for its enforcement infringes upon Nordell's rights under the Due Process Clause.

Rule 34 of the Commercial Arbitration Rules of the AAA provides:

> The Arbitrator may issue such orders as may be deemed necessary to safeguard the property which is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.

Nordell argues that this provision indicates that an arbitrator may only enter an interim order to protect the status quo, and further, that the order here was not designed to maintain the status quo because at the time

the order was entered, Nordell had stopped making its cash call payments. This argument has no merit. Even if Rule 34 defined the limits of the powers of arbitrators to enter interim relief, and even accepting Nordell's interpretation of the rule, the status quo at the time that the order was entered was that Nordell had the *obligation* to make the cash call payments. The order was intended to reinforce those obligations and thus maintain the legal status quo. Additionally, the cash call payments were necessary to the ongoing operation of the project. By requiring Nordell to continue making the payments, the arbitrators apparently intended to protect both parties' interests in the project.

Nordell also argues that the order was unconstitutionally vague. However, the order merely required the parties to comply with their obligations under the contract. Nordell was aware that it had the obligation to pay cash calls. In fact, the arbitrators reminded Nordell of that fact several times after the interim order was entered. The order was not vague.

In sum, we conclude that the interim order was properly entered. We further conclude that the redistribution remedy was within the arbitrators' power.

D

1

Nordell argues that the award must be set aside because of misconduct on the part of the arbitration panel. Nordell specifically alleges that the arbitrators failed to allow it to submit evidence in response to the

supplemental presentation that Triton prepared at the arbitrators' request on the issue of damages.

Section 10(a)(3) of the Federal Arbitration Act provides that an arbitral award may be vacated "[w]here the arbitrators were guilty of misconduct . . . in refusing to hear evidence pertinent and material to the controversy." 9 U.S.C. § 10(a)(4). However, "a showing of prejudice is a prerequisite to relief based on an arbitration panel's evidentiary rulings," including a failure to accept the submission of evidence. *Employers Ins. of Wausau v. National Union Fire Ins.*, 933 F.2d 1481, 1490 (9th Cir. 1991); *see also Mutual Fire, Marine & Inland v. Norad Reinsurance Co.*, 868 F.2d 52, 57 (3d Cir. 1989). Here, Nordell has neither alleged nor demonstrated that the refusal to accept its submission influenced the outcome of the arbitration. Thus, even if the refusal to accept the submission was wrongful, Nordell is not entitled to a vacation of the award. *See id.*

2

Nordell also argues that the award must be set aside because the arbitrators were partial to Triton. Nordell alleges that the following facts demonstrate the partiality of the arbitrators: (1) the acceptance of a claim presented by Triton for the first time on the penultimate day of the hearing; (2) evidentiary rulings in favor of Triton; (3) the sealing of a witness's testimony and report; (4) the status of Armour, one of the arbitrators, as former general counsel of ARCO; and (5) the severity of the award against Nordell and Veronex.

Except for the severity of the award, each allegation relied upon by Nordell concerns either behavior by the arbitrators at the proceedings or facts known to Nordell prior to the proceedings. "[A]s a general rule, [a party] must object to an arbitrator's partiality at the arbitration hearing before such an objection will be considered by the federal courts." *Apperson v. Fleet Carrier Corp.*, 879 F.2d 1344, 1358-59 (6th Cir.), *cert. denied*, 493 U.S. 809 (1989); *accord Sheet Metal Workers Int'l Ass'n v. Kinney Air Conditioning Co.*, 756 F.2d 742, 746 (9th Cir. 1985); *Berstein Seawell & Kove v. Bosarge*, 813 F.2d 726, 732 (5th Cir. 1987); *Cook Indus. Inc. v. C. Itoh & Co. (Am.) Inc.*, 449 F.2d 106, 108 (2d Cir. 1971), *cert. denied*, 405 U.S. 921 (1972). A court "will not entertain a claim of personal bias where it could have been raised at the arbitration proceedings but was not." *Fort Hill Builders, Inc. v. National Grange Mut. Ins. Co.*, 866 F.2d 11, 13 (1st Cir. 1989). Nordell did not assert its partiality claim at the hearing. To the contrary, Nordell emphasized its belief that the panel was *im*partial in its presentations before the arbitration panel. For example, in its closing argument, Nordell made the following statement:

> I said it before and I'll say it again. I have never seen such interest and real concern on the part of arbitrators. And we all appreciate it and I thank you very much for everything. We've gotten a very fair and complete hearing. Thank you.

By failing to object to the partiality of the arbitrators to the arbitrators themselves, Nordell has waived any partiality complaint arising from the arbitrators' behavior at the hearing or Armour's previous affiliation with ARCO.

Nordell did not have a chance, however, to present to the arbitrators its argument that the severity of the award demonstrates their partiality. Thus, Nordell has not waived this argument, and we must consider its merit. An arbitral award may be vacated if the arbitrators acted with "evident partiality." 9 U.S.C. § 10(a)(4). "The burden of proving facts which would establish a reasonable impression of partiality rests squarely on the party challenging the award." *Kinney*, 756 F.2d at 745. The party alleging evident partiality must establish specific facts which indicate improper motivation on the part of the arbitration panel. *Id.* at 746. This provision has been interpreted very stringently. For example, unlike in the judicial context, the appearance of impropriety, standing alone, is insufficient to taint the award. *Id.* A district court's finding that there was no partiality on the part of an arbitration panel is reviewed for clear error. *Id.* at 747.

Although we have never considered whether the magnitude of an arbitral award can, by itself, give rise to an inference of partiality on the part of arbitrators, other courts have flatly rejected that possibility. *See, e.g., Benjamin F. Shaw Co. v. Cincinnati Gas & Elec.*, 633 F. Supp. 841, 843 (S.D. Ohio 1968) ("Size of an award alone is not a sufficient basis for finding that the arbitrators are partial toward the winner."); *see also MSP Collaborative Developers v. Fidelity & Deposit Co. of Md.*, 596 F.2d 247, 251 (7th Cir. 1979) (construing the Indiana Uniform Arbitration Act, which was apparently modeled after the federal Act). Regardless whether there could ever be an award so disproportionate as to give rise to an inference of partiality, however, this award does not fall into that category. Each party had asked the arbitrators to restructure

the relationship between them, and had indicated that the parties were no longer able to work together. The district court concluded that the "reasonable inference to be drawn from the award is the panel attempted to strike a compromise that would permit both parties to maintain an interest in the project without unduly hindering the further administration of the project." The court found that because "there are reasonable theories upon which the panel could have relied in making its Award," the award is not so inherently unfair as to give rise to an inference of partiality. Those findings are not clearly erroneous.

In short, we reject Nordell's contention that the award must be vacated because the panel was partial in favor of Triton.

III

Veronex essentially makes two arguments in support of its position that the award against it must be vacated. First, Veronex argues that it did not agree to submit to the arbitrators' jurisdiction and thus is not bound by the arbitrators' decision. Second, Veronex argues that the arbitration panel exceeded its authority in deciding that Veronex is liable under the contract as the alter ego of Nordell because the parties *did not submit that issue* to the arbitrators for decision. This argument focuses on whether the arbitrators had the power to decide a particular issue, not whether they had jurisdiction over a party. We consider the second issue first.

A

An arbitration panel exceeds its authority under section 10(a)(4) if it decides issues other than those submitted to it by the parties. *Retail Store Employees Union Local 782 v. Sav-On Groceries*, 508 F.2d 500, 503 (9th Cir. 1975); *Totem Marine Tug & Barge v. North Am. Towing*, 607 F.2d 649, 651 (5th Cir. 1979). Here, neither party explicitly requested a review of Veronex's rights and obligations under the contracts between Triton and Nordell. Triton sought relief solely from Nordell, not from Veronex. Moreover, neither party explicitly asked the panel to decide whether Veronex was the alter ego of Nordell.

However, any issue that is "inextricably tied up with the merits of the underlying dispute" is within the scope of the submission and may be addressed by the arbitration panel. *McAllister Bros. v. A & S Transp. Co.*, 621 F.2d 519, 522-23 (2d Cir. 1980); *see also Nolde Bros. Inc. v. Local 358 Bakery and Confectionery Workers Union*, 430 U.S. 243, 254 (1977). The affairs of Veronex and Nordell were inextricably intertwined. Veronex was highly involved in the making and performance of the contracts. For example, the record reflects that much of the correspondence about the project was conducted between Veronex and Triton. The arbitrators may have had to resolve the alter ego issue as a threshold question in order to make sense of the transactions involved. Under these circumstances, we conclude that the alter ego question was implicitly submitted for review and, thus, properly considered by the arbitrators.

Nordell could thus be bound by that determination. *See Local No. 359 v. Arizona Mechanical & Stainless*, 836

F.2d 647, 653 n.6 (9th Cir. 1988) (citing cases). Whether Veronex is also bound depends on whether the arbitrators had jurisdiction over Veronex. *Id.* We now turn to that question.

B

The arbitration panel concluded that it had jurisdiction over Veronex because Veronex had ratified the agreement to arbitrate. Further, it implicitly rested its assumption of jurisdiction on the finding that Veronex was the alter ego of Nordell. The district court deferred to the arbitration panel's determination of its own jurisdiction.

The mere fact that Veronex ratified the agreement between Triton and Nordell, and thus agreed to arbitrate its disputes with Triton, does not in itself give the arbitrators the authority to enter an award against Veronex *in this particular proceeding*. Veronex was not named as a party to the proceeding. In the absence of the consent of the party, "arbitrators do not have power to add new parties to arbitration proceedings," *Pacific Reinsurance v. Ohio Reinsurance*, 935 F. 2d 1019, 1026-27 (9th Cir. 1991), and, by implication, cannot enter awards against non-parties.

If Veronex is the alter ego of Nordell, however, then Veronex can be bound by the award. Consent to arbitration may be implied from the voluntary submission of claims to the arbitrator. "A claimant may not voluntarily submit his claim to arbitration, await the outcome, and, if decision is unfavorable, then challenge the authority of the arbitrator to act." *George Day Constr. v. United Bhd. of*

Carpenters, 722 F.2d 1471, 1474 (9th Cir. 1984). If Veronex is the alter ego of Nordell, when Nordell filed its demand for arbitration, thereby voluntarily submitting to the jurisdiction of the arbitration panel, Veronex submitted to the arbitrators' jurisdiction as well. In other words, when Nordell submitted claims against Triton, Veronex, if Nordell's alter ego, necessarily joined it. Veronex, however, is not necessarily bound by the arbitrators' determination that it is the alter ego of Nordell. Instead, Veronex has the right to an independent judicial determination of that issue. *Arizona Mechanical & Stainless*, 863 F.2d at 653; *Laborers' Int'l Union v. Foster Wheeler Corp.*, 868 F.2d 573, 575-76 (3d Cir. 1980). Veronex may have *waived* that right, however, by agreeing during the course of the proceedings to allow the arbitrators to make that determination. *Cf. Ralph Andrews Prod. v. Writers Guild*, 938 F.2d 128, 130 (9th Cir. 1991) (appellant clearly reserved the issue of arbitrability for judicial determination). Whether Veronex waived this right is a factual determination that depends on the nature of Veronex's participation in the proceedings. We cannot make that determination based on the record before us; instead, such a factual determination must be made by the district court. We thus remand to the district court for a determination of whether Veronex consented to have the arbitrators decide the alter ego issue, and if Veronex did not consent, a de novo determination whether Veronex was in fact the alter ego of Nordell. *See Arizona Mechanical & Stainless*, 863 F.2d at 653.

IV

In sum, we affirm the confirmation of the arbitration award against Nordell. We reverse the confirmation of the arbitration award against Veronex, and remand to the district court for further proceedings.

AFFIRMED in part, REVERSED in part, and REMANDED. Each party to bear its own costs.

APPENDIX B

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NORDELL INTERNATIONAL RESOURCES, LTD., Plaintiff, v. TRITON INDONESIA INC., TRITON ENERGY CORPORATION, and TRITON OIL (NZ) LTD., Defendants.	No. CV 90-6894-ER FINAL JUDGMENT CONFIRMING ARBITRATION AWARD (Filed Feb. 25, 1992)

IT IS HEREBY ORDERED AND ADJUDGED that the Arbitration Award and Resolution and Clarification of Arbitration Award (collectively, the "Arbitration Award") issued by the American Arbitration Association Panel on December 13, 1990 and August 30, 1991 and attached hereto as Exhibit 1 shall be confirmed in all respects.

IT IS FURTHER ORDERED AND ADJUDGED that a Final Judgment is hereby entered by the Court in favor of Triton Energy Corporation and Triton Indonesia Inc. and against Nordell International Resources and Veronex Resources Ltd. incorporating in its entirety the terms of the Arbitration Award attached as Exhibit 1, and such Award is hereby confirmed as a judgment of this Court.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve, by United States mail, copies of this Order on counsel for the parties in this matter.

Dated: February 25, 1992

/s/ Edward Rafeedie
EDWARD RAFEEDIE
United States District Judge

AMERICAN ARBITRATION ASSOCIATION

Award of Arbitrators

Nordell International Resources, Ltd.

-and-

Triton Indonesia, Inc. and Triton Energy Corp.; Triton Oil (NZ) Limited

72 T199 0204 90

The undersigned arbitrators make the following findings with respect to the parties' interest in the case and hereby render their award in the above-captioned matter as follows:

1. Triton assumed the role of Operator of the Enim Project on October 7, 1988.

2. Triton Oil (NZ) Limited is not an independent participant in the Enim Project, and therefore cannot be considered as a separate party in this case.

3. The "carry" period, as provided in Paragraph 7.4 of the Farmout Agreement between Nordell International Resources, Ltd. ("Nordell") and Triton Indonesia, Inc. ("Triton"), during which Triton was obligated to bear all costs and expenses of the Enim Project from the Effective Date of the Farmout Agreement ended on November 25, 1989.

4. The decisions made at and actions taken as a result of Operator's Committee Meeting No. 2, held in Bangkok on August 28 and 29, 1989, did not constitute an amendment of the Farmout Agreement and of the Joint Operating Agreement of October 7, 1988, and the attachments thereto.

5. Triton, as operator, has no obligation to make Cash Calls and Joint Interest Billings to itself as provided for in the Accounting Procedure attached to the Joint Operating Agreement.

6. The $3 million dollar payment by Triton to Nordell on December 5, 1988, as provided in the Farmout Agreement, Paragraph 7.3, is not a deduction from the $21.2 million dollar net project investment Triton was obligated to make in the project.

7. The Net Project Investment in the Enim Project does not include the following adjustments requested by Nordell:

   A. Added interest expense of $870,356.00 charged by Veronex, Ltd. to Nordell for loans or advances.

   B. An addition to the Fixed Asset Accounts of $334,560.00.

   C. An addition to inventory of $604,590.00.

D. An addition to the Net Project Investment of $93,500.00 for Nordell corporate expense.

E. Any and all corporate interest expense.

9. Nordell is not to be reimbursed for "other assets" in the amount of $236,807.00. They were included in the $21.2 million original project investment.

10. Nordell is not to be reimbursed for $52,000.00 from the creditor list as these expenses were not documented.

11. Nordell is not to be reimbursed for the interest paid of $5,612.00 since it was properly charged by Triton.

12. Nordell defaulted under the terms of the Joint Operating Agreement in failing to pay Cash Calls No. 6 and No. 7.

13. In not paying the Cash Calls No. 6 and No. 7, Nordell failed to carry out the order of the Arbitrators issued on September 11, 1990, that the parties take no action to prejudice the interests of the other party and to perform their obligations under the Agreements until the Arbitration proceeding was concluded.

14. The decisions, findings and orders set forth in this award apply to the Areas of Mutual Interest as well as the Enim Project under the above-mentioned agreements.

15. In view of the above findings, the following order is hereby issued:

A. That Nordell or Veronex Resources Ltd., Nordell's parent company, pay to Triton Indonesia, Inc. on or before January 31, 1991, the following amounts:

i. Nordell deficit as of September 30, 1990, according to the KPMG report.. $ 663,402.00

ii. Revenue originally paid to Nordell by Triton from Pertamina proceeds in excess of what should have been paid as computed on the cash basis provided in the Agreements..... $ 329,053.00

Less:

Excess joint interest billing for November 1989, since the "carry" was met on November 25, 1989, rather than on November 1, 1989..... ($ 483,741.00)

Net sum due Triton from above adjustments ..... $ 508,714.00

iii. Triton's legal and arbitration costs:

Attorneys' fees..	$ 211,298.00	
Expenses of arbitration.....	$ 120,809.00	
Arbitrator's fees and expenses..	$ 90,000.00	(approx)
		$ 422,107.00

Total amount due Triton from Nordell $ 930,821.00

B. That, in view of both parties' request for an adjustment of the interest of each in the project and in view of Nordell's demonstration of bad faith in not paying Cash Calls and incessant harassment of Triton's operations, Nordell's (and Veronex's) interest in the Enim Project (including the Areas of Mutual Interest) effective October 1, 1990, be converted to a "net

profits" interest in the project in the amount of five percent (5%) of the net profits realized each year from the project as determined in accordance with generally accepted accounting principles applied on a consistent basis. KPMG Peat Marwick, or another international accounting firm, as selected by Triton, shall supervise and review the calculation of annual net profits. (Carryover of prior years' cost pool is not permitted for this calculation.) Such calculation of annual net profits shall be made by Triton within ninety (90) days of the end of its fiscal year. Payments made after the ninetieth day shall include interest at the rate of fifteen percent (15%) per annum.

Nordell, at its own expense, may retain either Arthur Andersen and Company, Ernst and Young, or Deloitte and Touche to audit the net income calculation. Differences of opinion between the accounting firms of Triton and Nordell shall be resolved solely between those accounting firms without the interference of either Triton or Nordell. In no event shall Nordell become involved directly with Triton in the calculation of net profit except through its accounting firm as provided above.

In the calculation of such net profit each year, actual overhead and technical services provided to Triton by offices and personnel outside of Indonesia shall in no event exceed $80,000.00 per month in the aggregate.

C. Nordell shall not consult nor deal with Pertamina with respect to the Enim Project except at Triton's request, which shall be complied with.

D. Original copies of all documents exchanged between the parties during the course of the arbitration proceedings shall be returned immediately to the respective party who submitted such documents.

E. Nordell shall refrain from participating in and interfering with the operations of the project in any manner from the date of this award.

The administrative fees and expenses of the American Arbitration Association shall be borne by Claimant, Nordell International Resources, Ltd., as directed by the Association.

This award is in full settlement of all claims and counterclaims submitted by either party against the other in this arbitration.

/s/ George P. Armour
George P. Armour, Esq.

/s/ Thomas D. Pyburn
Mr. Thomas D. Pyburn

/s/ Marvin Grudes
Mr. Marvin Grudes, CPA

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In the Matter of the Arbitrator between

Nordel International Resources Ltd.,
c/o Veronex Resources Ltd.
-and-
Triton Indonesia, Inc., and Triton Energy Corporation; Triton Oil (NZ) Limited

Case No: 72 T199 0204 90

United States District Court

Central District of California

Nordell International Resources, Ltd.,

Plaintiff,

vs.

Triton Indonesia, Inc., et al.,

Defendants.

No. CV 90-6894-ER

Order Remanding Issues to Arbitration Panel

Arbitrators' Resolution and Clarification of Arbitration Award in response to Order of Remand of Issues to Arbitration Panel.

In response to the Court's Order of Remand, the undersigned arbitrators hereby make the following findings:

1. The panel's award creates in Nordell a five percent (5%) net profits interest in the Enim project. Henceforth, Triton becomes the owner and holder of the entire interest, and Nordell has the right only to receive an amount equal to five percent (5%) of the net profits realized from the operation. Nordell no longer has any other interest in the Enim project, the Farmout Agreement and the Joint Operating Agreement, including Cost Oil Allocation. Participation in Investment Credit Oil and Participation in Net Revenue Interest Oil as provided in paragraphs 8, 9 and 10 of the Farmout Agreement. Any obligations to Gavan Petroleum Limited and Richport Resources, Ltd. under the agreements between Nordell and those companies were assumed by Nordell and/or Veronex on execution of the Farmout Agreement, and Triton has no obligations of any kind to either Gavan or Richport. Also, other obligations assumed by Nordell in the Farmout Agreement and Joint Operating Agreement shall remain in full force and effect.

2. In view of the net profits interest created in Nordell by the Award there is no future obligation of Nordell to pay any costs after September 30, 1990. Therefore, from that date Triton shall make no further cash calls or submit joint interest billings.

3. The Arbitrators found that the actions taken at the Operator's Committee Meeting No. 2, held in Bangkok on August 28 and 29, 1989 did not constitute

amendments to the Farmout Agreement and Joint Operating Agreement of October 7, 1988.

4. The Arbitrators found from the evidence adduced at the hearings that Veronex, the parent company of Nordell, was in fact the alter ego and controlling entity of Nordell in the inducement, negotiation and performance of the contract. Also, both corporations acted interchangeably as principals or agents for each other throughout the period in question. In addition, on November 13, 1988, Veronex specifically represented that it ratified and reaffirmed all the terms and conditions of the Farmout Agreement.

5. The Arbitrators found that despite the provisions of the Farmout Agreement, Triton was in fact the operator of the project from October 7, 1988 since all the acts and decisions necessary to carry out the operations were performed by Triton. Nordell was incapable of carrying out the management and operation of the project.

By reason of the foregoing, the undersigned arbitrators hereby state that the findings, orders and payments set forth in the Award of December 13, 1990 remain in full force and effect, and respectfully request the Court to confirm the Arbitration Award.

/s/ George P. Armour
Arbitrator George P. Armour

/s/ Thomas D. Pyburn
Arbitrator Thomas D. Pyburn

/s/ Marvin Grudem
Arbitrator Marvin Grudem

Dated: August 30, 1991

APPENDIX C

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NORDELL INTERNATIONAL RESOURCES, LTD.,

Plaintiff,

v.

TRITON INDONESIA INC. TRITON ENERGY CORPORATION, and TRITON OIL (NZ) LTD.,

Defendants.

TRITON INDONESIA INC. and TRITON ENERGY CORPORATION, and TRITON OIL (NZ) LTD.,

Counter-Plaintiffs and Third-Party Plaintiffs,

vs.

NORDELL INTERNATIONAL RESOURCES, LTD.,

Counter-Defendant and

VERONEX RESOURCES, LTD.

Third-Party Defendant.

No. CV 90-6894 ER (Sx)

ORDER GRANTING DEFENDANT TRITON'S MOTION TO CONFIRM ARBITRATION AWARD AND ARBITRATORS' CLARIFICATION AND RESOLUTION OF ARBITRATION AWARD; DENYING PLAINTIFF NORDELL'S MOTION FOR RECONSIDERATION; DENYING THIRD-PARTY DEFENDANT VERONEX'S MOTION TO VACATE

(Filed Nov. 25, 1991)

Having read and considered the pleadings filed in this matter, IT IS HEREBY ORDERED that defendant Triton's Motion to Confirm Arbitration Award and Arbitrators' Clarification and Resolution of Arbitration Award is granted; plaintiff Nordell's Motion to Reconsider the Court's February 8, 1991 Order denying Nordell's Motion to Vacate is denied; Third Party defendant Veronex's Motion to Vacate is denied.

The Court finds defendant Triton's Motion to Confirm timely and properly made within this district under 9 U.S.C. § 9. The arbitration panel's Clarification and Resolution of Arbitration Award satisfactorily resolves this Courts' questions regarding the Award.

As to plaintiff Nordell's Motion for Reconsideration, the Court reiterates its findings of February 8, 1991 that the arbitration panel did not exceed its powers and was not partial. Furthermore, the Panel's use of its equitable power to restructure the agreement between the parties was both reasonable and legitimate. Nordell has failed to provide any new evidence or authority to suggest otherwise.

In the Arbitrators' Resolution and Clarification of Award the Panel found third party defendant Veronex to be the "alter-ego and controlling entity of Nordell in the inducement, negotiation and performance of the [ENIM] contract." The Panel also made a specific finding that "both corporations acted interchangeably as principals or agents of each." The Court accepts the Panel's finding of alter-ego and agency as sufficient to allow the Award to stand against Nordell's parent company Veronex.

This Court has previously stated, if any reasonable theory for granting relief exists, this Court will not vacate the award. *Sobel v. Hertz, Warner & Co.*, 469 F.2d 1211 (2nd Cir. 1972). In light of the fact that Nordell is a wholly owned subsidiary of Veronex; the conduct of the parties at the arbitration proceedings; and evidence that Veronex ratified the Joint Operating Agreement and thereby consented to arbitration, the Court finds the Panel's findings of alter-ego and agency to be factually well supported. A finding of alter-ego by an arbitration panel is properly confirmed if sufficiently supported by the facts. *International Bhd. of Elec. Workers v. Hyland Wilson Elec. Contractors, Inc.*, 689 F.Supp. 995 (N.D. Cal. 1987), *rev'd on other grounds*, 881 F.2d 820 (9th Cir. 1989).

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve, by United States mail, copies of this Order on counsel for the parties in this matter.

Dated: November 25, 1991

/s/ Edward Rafeedie
EDWARD RAFEEDIE
United States
District Judge

APPENDIX D

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NORDELL INTERNATIONAL RESOURCES, LTD., Plaintiff, vs. TRITON INDONESIA, INC., et. al., Defendants.	No. CV 90-6894-ER ORDER REMANDING ISSUES TO ARBITRATION PANEL (Filed Feb. 6, 1991)

The Court, having read and considered the motion, opposition and reply, and having considered all timely filed exhibits and documents, HEREBY ORDERS plaintiff Nordell's motion to vacate arbitration award is denied, defendant Triton's motion to confirm arbitration award is stayed, and the following issues are remanded to the original arbitration panel for resolution and/or clarification:

[1] legal effect of the original agreements and the 1989 amendments,

[2] Nordell's obligation to pay cash calls, and

[3] the reasons for granting relief against Veronex.

It is the Court's opinion that the Arbitration Panel did not exceed its powers. If any reasonable theory for granting the relief given exists, this Court will not vacate the award. *Sobel v. Hertz, Warner & Co.*, 469 F.2d 1211 (2nd

Cir. 1972). The award of fees and expenses associated with the arbitration, both attorney and non-attorney, appears to be within the panel's authority under Commercial Arbitration Rule 49. Rule 49 permits the panel to award ALL expenses of arbitration against any party. Nordell also contends the Panel exceeded its authority by granting punitive damages. The Court believes the Panel did not award punitive damages for bad faith breach of contract, but instead awarded them, if at all, because of Nordell's willful violation of the panel's interim order. Furthermore, during the arbitration Nordell submitted a brief which strongly urged the Panel to invoke its inherent equitable powers to grant punitive damages. Nordell can not be permitted to now argue the Panel exceeded its power by doing something Nordell requested the Panel to do.

Nordell next argues the panel exceeded its powers by restructuring the contractual relationship between the parties. However, there appears at least one reasonable basis for this action by the panel. Both parties were requesting equitable relief in the form of complete forfeiture of the other party's interest. The reasonable inference to be drawn from the Award is the panel attempted to strike a compromise that would permit both parties to maintain an interest in the project without unduly hindering the future administration and management of the project. It is the Court's belief the arrangement created by the award was within the broad authority conferred on the panel by the parties when they requested the drastic remedy of forfeiture. It is not the function of this Court to second guess the panel's exercise of its authority. *John T.*

Brady Co. v. Form-Eze Systems, Inc., 623 F.2d 261, 264 (2nd Cir. 1980), *cert. denied*, 449 U.S. 1062, 101 S.Ct. 786.

Nordell also contends the panel exceeded its authority by rendering an award inconsistent with agreements. The Court agrees the finding that Triton was operator during the interim period is inconsistent with the agreements. However, this does not appear to be material. On the other hand, there is no inconsistency with the finding that Triton no longer needs to make cash calls upon itself. This appears consistent with the panel's restructuring of the relationship between the parties.

It is the Court's opinion that the arbitration panel was not partial. Nordell bears the burden of proving "evident partiality" in this motion. The Award standing alone is not so unfair as to demonstrate evident impartiality. The Court has just explained there are reasonable theories upon which the Panel could have relied in making its Award. Therefore, the Award is not so inherently unfair as to permit the only explanation of partiality.

It is within the Court's authority to order remand when it appears the panel imperfectly exercised its powers. In the Award which is before the Court, it appears the Panel imperfectly exercised its powers. The Award fails to sufficiently delineate the new relationship between the parties. There is no guidance as to the continuing effect of the original agreements nor whether Nordell has continuing obligations to pay cash calls. Additionally, the Award does not explain the legal effect of the August, 1989 agreements. Finally, there appears to be no basis for granting relief against Veronex, Nordell's parent company. It is the Court's opinion that these

issues, ([1] legal effect of the original agreements and the 1989 amendments, [2] Nordell's obligation to pay cash calls, and [3] reasons for granting relief against Veronex) should be remanded to the Panel for clarification. In all other respects, the Award appears to be within the Panel's authority and the Court will not vacate the Award.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve, by United States mail, copies of this order on counsel for the parties in this matter.

DATED: February 6, 1991.

/s/ Edward Rafeedie
EDWARD RAFEEDIE
United States
District Judge

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NORDELL INTERNATIONAL RESOURCES, LTD. Plaintiff-Counter-Defendant, v. TRITON INDONESIA, INC.; TRITON ENERGY CORPORATION; TRITON OIL (NZ) LTD., Defendants-Counter-Plaintiffs-Third Party Plaintiffs-Appellees. v. VERONEX RESOURCES LTD., Third-party-defendant-Appellant.	)	No. 92-55058 D.C. No. CV-90-6894-ER
NORDELL INTERNATIONAL RESOURCES, LTD., Plaintiff-Counter-Defendant-Appellant, v. TRITON INDONESIA, INC.; TRITON ENERGY CORPORATION; TRITON OIL (NZ) LTD. Defendants-Counter-Plaintiffs-Third Party-Plaintiffs-Appellees.	)	No. 92-55433 D.C. No. CV-90-6894-ER

NORDELL INTERNATIONAL RESOURCES, LTD., Plaintiff-Counter-Defendant, VERONEX RESOURCES LTD., Third-Party-Defendant-Appellant, v. TRITON INDONESIA, INC.; TRITON ENERGY CORPORATION; TRITON OIL (NZ) LTD.	No. 92-55434 D.C. No. CV-90-6894-ER ORDER (Filed Sep. 21, 1993)

Before: WALLACE, Chief Judge; O'SCANNLAIN and FERNANDEZ, Circuit Judges.

Appellees' motion for leave to file objection is DENIED.

Appellees' petition for rehearing is DENIED.

The panel has voted to deny appellants' petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the en banc suggestion, and no judge of the court has requested a vote on it.

Appellants' petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED.

APPENDIX F

TRITON ENERGY CORPORATION
INTEROFFICE COMMUNICATION

CONFIDENTIAL

TO: David E. Gore
Joe Ciavarra
Rob Puetz

September 25, 1989

FROM: Michael A. Calloway

RE: INDONESIAN OPERATIONS – JAKARTA AND ENIM

Since my return from Indonesia there have been discussions regarding my observations of our activity with Frank Cheatham, Rob Puetz, and Joe Ciavarra. The following tries to capsule these observations for a permanent record. Some of the following statements include recommendations to increase our internal control which were developed after my return. These have not been discussed with our Indonesian personnel. I felt it more appropriate to first put them on the table with you.

1. In Indonesia, I found myself in a country of state supported corruption. There, in order to do business you apparently have to adopt the standards of Indonesia.

2. I was told that we pay between $1,400 and $1,900 per month just to get our invoice to Pertamina paid. We have an Indonesian employee in Jakarta who takes these people out to lunch and pays them cash. Naturally, we do not get receipts for this type of payment, so how do we know what it really costs us for the invoice to be paid.

3. We must pay people in customs in order to get our equipment off the dock so that it can be used in operations. Again, cash payments with no receipt so how do you know what is real.

4. We even pay BPKP auditors working on the audit of our records to determine what is cost recoverable. We apparently pay for their travel and expenses when they go to Sumatra (possibly understandable) and when they go to the United States to visit Nordell's or Triton's offices. So much goes to the assisting auditors, to the lead auditor, to his boss, etc.

   What is worse, and this is extremely confidential, is that we paid the auditors in order to have their audit exceptions taken care of. Instead of the $600,000 of audit exceptions, we paid them approximately $150,000 to $200,000. This part is particularly bad to me. I had hoped that at least the Indonesian auditors were honest. But, I was told time and again that every Indonesian will steal from you.

5. I do not know if we participate in this, but I was told that Pertamina officials also get plane tickets, get college educations for their children, etc.

6. Then, after these payments are made, you must figure out a creative way to document these payments in order for them to be cost recoverable. Unless you are the one on the scene at the time, it is very difficult, perhaps impossible, to tell a real transaction from one that has been faked for cost recovery purposes.

7. The bid process was explained to me by one of our people in Jakarta. The way it was explained, it sounded ideal. Sealed bids; opened in front of a committee; etc. Then our employee said that this

procedure could be circumvented by talking to a contractor who could arrange to have all of the documentation provided, other company's bids included, so that the low bidder would be the company which you wanted to receive the award.

This is terrible to admit, but sometimes we may want to do this. For example, one of the fears of our people is that we will have to go out for bids, Pertamina will supply us with their approved vendor list, and the low bid received from the contractors on this list will be a "briefcase company." This is a company owned probably by a Pertamina official who has no equipment, office, or expertise. But, he was the low bidder and we will be forced to use his company. This type of situation could seriously affect our operations.

If we did decide to obtain a vendor this way, I would strongly recommend that documentation be prepared so that we know why it was done, how it was done, and who approved it. This documentation should also be prepared for any bids already awarded in this manner. If we are forced to play games, we should at least be able to tell why we did it and leave a trail to tell legitimate transactions from those which are not so legitimate.

8. The question I have heard often regarding the payoffs in Indonesia is "Does everyone have to do this or is it just Triton?" I do not believe it is only Triton. At the Petroleum Accountants Society of Dallas meeting on September 21, 1989, I had a discussion with a longtime member of Arco's audit staff. He confirmed that Arco has had the same experience in Indonesia and went on to say that they had many internal control problems in their own office in Jakarta.

9. We use contractors to provide local labor at the field location and to provide expatriate people above the level approved by Pertamina. This area concerns me. The indication I've gotten from our people is that local labor are not being paid their termination pay or overtime which they have earned and we have paid to the contractor. A laborer who complains will go before the "Manpower" people in Palembang where they will have no chance because the contractor has paid off the officials to look the other way. The contractor is probably not paying the laborers' income taxes to the government. The same is true of the expat people. Each month we pay the contractor, as an example, $3,000 (base pay) + $2,000 (work permits, taxes, etc.) + $150 (5% fee on base pay). I do not believe the contractor is paying the expat's income taxes to the government. I have been assured that Triton has no liability since we have paid what we were supposed to and it is the contractor's responsibility from there on. I do not know if this is true. Perhaps Triton is in the clear, but what about the expats? I do not know.

10. This situation could provide the contractor with a large supply of cash with which to buy business from Triton. I am not saying that this is happening, but the cash is very probably available and the business climate is certainly the type to encourage this type of activity.

    Normally, I would like to perform vendor audits where I suspect something of this nature: either not paying people what they have earned and for which we have paid, or possible kickbacks to Triton employees. In the States, failure to pay employee overtime or benefits that we have paid to the vendor would be an automatic exception with a

demand for repayment to Triton. In extremely bad cases, the contractor should be cut off. People that I trust in our offices indicate that this type of audit could adversely affect our operations. The labor could be pulled out and we could end up with a worse vendor. I am assured that the labor contractor we have is probably the best in Indonesia and even without the overtime and benefits due them, the laborers are better off than the 40% of Indonesians who are never employed.

11. The possible kickbacks are a different story. We have to try to do everything possible to prevent this situation from occuring. We have to have honest employees in responsible positions. They have to be above reproach or suspicion. We should also send letters annually to our vendors saying that we will supply business to contractors based on quality, service, and price and for no other reason. They should be encouraged to notify Dallas if any attempt is made to sell business by our employees and they should be assured that current and future business with Triton will not be hurt if they do so. This type of "Fair and Consistent Dealings" letter is not unusual in the industry and may be useful in protecting Triton from Triton employees. I don't want to sound like a policeman, but if we can't keep from playing games with Pertamina and customs and other government agencies, and we can't make sure that our contractors pay their people or their taxes, at least we should try everything possible to make sure we protect Triton from our own people.

12. Internal controls are a starting place. Internal controls in the States are based on the premise that one out of two people is honest. This is not necessarily the case in Indonesia where "every Indonesian will

steal from you if given the opportunity" and the business realities could be tempting enough for some expats to do the same. More extreme measures are necessary. We have to plant some doubt in the minds of our people about how safe and accepted corruption is in Indonesia. Even a remote possibility of being reported to Dallas is better from our standpoint than what we have now. We should do everything possible to check the background of prospective expats, full time or contract, before they are sent to Indonesia. I don't mean calling just the references shown on their resumes, but calling other people who may know them and the circumstances under which they left previous employers. I believe Dallas should do this background check and have the final say before an expat is sent to or hired by our Jakarta office.

Personnel files on all contract expats should be maintained in Dallas, and should include their job assignments, responsibilities, signature authorizations, approval limits, and periodic evaluations. (Basically, who do they report to, what are they supposed to be doing, how are they supposed to do it, how is it paid for, who approves what, and how well they are doing their job.)

13. Expats, both Triton and contract, and local hires should be required to sign a letter annually regarding their knowledge of Triton employees' conflicts of interest; irregularities; or fraudulent activity. These letters should be held confidential from other employees in Indonesia and sent to me or someone else in Dallas. There should be no possibility of reprisal against a whistle blower trying to do the right thing. Allegations should be investigated. These letters should be specific regarding consequences for failure to disclose knowledge of such

activities. It may sound like it, but I am not advocating "Big Brother." This procedure is merely designed to cause doubt about how safe it is to participate in activities that are detrimental to Triton. Those employees who do nothing wrong will realize the benefit and the necessity of this type of letter. They will understand that we are just trying to maintain control and will have nothing to fear. Those who are tempted to take a chance may realize it is not as safe as it may have been perceived and object to this procedure. Also, they may be convinced that taking a chance is no longer prudent or profitable.

Extreme situations require extreme measures.

14. I had indications that some of the Expat contract people were not very capable individuals. I was told one was more interested in staying on the phone in Jakarta acting as Mr. McAdoo's stockbroker than in assisting in the field operations at ENIM. Apparently this person,whose name I do not know, only made one trip to ENIM. I was also told that Joe Pope, contract wireline specialist, was not worth what we were paying him. I believe he was Mr. McAdoo's roommate at Texas Tech. Technical people would be better equipped than I to make a determination of these allegations.

15. When I attended the OPCOM in Bangkok, the Nordell people spent a good deal of time discussing the variances between production and water injection projections versus actuals. They wanted to know if the projections were only for Pertamina's sake. The implication being that the non-operators should have projections of what we really think is going to be possible so that adequate plans could be made. They have a legitimate point. They also asked what roadblocks were ahead after the three rigs were

received. They asked what were we doing now to head off those roadblocks. Another legitimate point. Are we planning the way we should be?

16. When I met Mr. McAdoo in Jakarta, this was one area that I asked him about. Were we planning the most optimum approach to which wells should be utilized for injection and which should be produced? Did we have a logical plan that would best utilize the new equipment and was that information being communicated to Barry Jones in the field? I was assured by Mr. McAdoo that this was done. During my stay at ENIM, I got the opinion that this was not the case.

17. Mr. Jones impressed me while I was at ENIM. He is putting together a fine facility. He is "making do" in any way he can. They have reclaimed tanks from the jungle; fabricated new tanks from steel available in Indonesia; fabricated separators from drainage conduits; constructed camp facilities for the contract labor (which we need to bill the contractor for); constructed facilities for injection, etc.; constructed shop facilities, made great improvements in security and availability of warehouse items (at least they look good compared with what I had heard they used to be like); cleared all locations so they are ready for rigs to be moved on; begun central generating and distribution of electricity; improved roads; planned ahead for the rainy season and staged materials in place for numerous projects which can be done when it is wet. Those projects best done when the weather is good have been aggressively worked on. Those which can wait, have been planned and prepared for. His welders even fabricate their own mills to use on downhole junk rather than trying to purchase them.

I was amazed at this man's achievements, organization, planning, and effort.

I was also concerned about what would happen if a truck were to hit him and put him in the hospital. I had heard that he had not taken any time off since last December. I could see that he worked horrible hours, probably 16 to 18 hours a day or more. He told me that he had taken some time off not too long ago and that Russ Hopley had filled in for him. Things had not fallen apart and I believe he realized that it would be possible to take off more in the future. I believe Mr. Jones is very honest. However, one basic internal control is that people must take their vacations and get time off. Many times frauds have been discovered by something coming across a person's desk while he was taking time off. All employees should be required to do so. I later found out that Mr. McAdoo had basically ordered him to take some time off. This was probably a good move. Apparently, the recommendation had been made that Mr. Jones should have some help in the form of an office manager or administrative manager to take some of the burden off of him. I was told that he had resisted this idea but on the last afternoon at ENIM he told Pat Murphy and me that he was now in favor of the idea. He wanted the Jakarta office to locate someone to fill the position. Mr. McAdoo and Mr. Keever seemed surprised to hear of this turnaround when I talked to them.

18. I believe that Mr. Jones is doing everything he knows how to do. The facilities being assembled and the progress being made support this belief. I do not believe that he has gotten the technical assistance as far as proper development of the reserves goes or administrative assistance that he needs. Again, technical people from Dallas would be better equipped to determine the adequacy of assistance being provided to the field operations.

From the administrative side, Pat Murphy basically said that either he or Phil Keever should visit the field every month just to provide that type of help from now on. Mr. Jones is betting the future on Jack Monk, the new engineering manager. He feels that this man will work with him and provide the technical help necessary as soon as Mr. Monk gets his feet on the ground.

19. When I returned from ENIM, I heard of several job announcements made by Mr. McAdoo which should have a positive effect. Mr. Monk was announced as the Engineering Manager and Russ Hopley was to be responsible for contracts and purchasing where he has previous experience. The latter helps Mr. Keever who had been responsible for those areas.

20. The visits to Jakarta and ENIM by people from Dallas, technical and administrative should continue. These visits serve to assist our people in Indonesia, monitor progress and activity, and provide reinforcement of the importance of this operation.

As a quick summary, since I arrived at Triton everyone has been expressing concern for our Indonesian operation. After this trip, I understand why. The business climate is one that dictates concern. With so much corruption accepted in this country, and so much investment required to make this a productive operation, I do not think we can spare the effort to provide constant control, monitoring, and scrutiny.

/s/ Michael A. Calloway
Michael A. Calloway

APPENDIX G

MICHAEL CALLAWAY SWORN AND EXAMINED

22-10-90

MR ARMOUR:

Q. Callaway what is your full name and address please?

A. Michael Callaway. 1067 Fernhill Road, Dallas, Texas.

MR GRZANKA:

Q. Mr Callaway are you currently employed?

A. Yes I am.

Q. Where?

A. Triton Energy Corporation, Dallas.

Q. What is your position?

A. Director of internal audit.

Q. Have you spent any time with respect to the ENIM project since the summer of 1989?

A. Yes I have.

Q. How much time?

A. Total time.

Q. Give me a guesstimate?

A. 15 weeks.

Q. 15 total weeks as since summer of 1989. Correct?

A. Yes sir.

Q. You were here last week when Mr Poulton testified, weren't you?

A. That's correct.

Q. Did you hear his testimony when he referred to a comment that he said was made by Mr McClure, when Mr McClure said 'We have bribed Pertamina auditors in the past and we could do that again if we have to,' or words to that effect? Did you hear that testimony?

A. I didn't hear all his testimony, I am not sure I heard that part.

Q. Well you are aware that the Triton has in fact bribed Pertamina auditors. Right?

A. I am aware that a –, I am not sure I'd call it a bribe. We have paid Pertamina auditors.

Q. In fact you paid Pertamina auditors between a 150 and 200,000 to take care of, shall we say, exceptions to cost recovery items. Is that the truth?

A. Is correct.

Q. I show you a copy of a document marked Exhibit 19.

EXHIBIT SHOWN

Can you tell us what Exhibit '19' is?

A. It's a letter that I wrote in September 1989 after a one week visit to Jakarta.

Q. What did you write?

A. It is more or less to capture the thoughts and recommendations that I had at that time of my return to Dallas. More or less a trip report is what you might call it.

Q. What happened to the original of this document?

A. It was destroyed.

Q. Who destroyed it?

A. I did.

Q. Why did you destroy it?

A. It was distributed to the people they were shown the report, after my boss, they both read it, he said 'collect the copies and have them destroyed,' so I did.

Q. Did he say why you want them all destroyed?

A. No.

Q. Now you see the check next to Mr Ciavarra's name? Does that mean anything to you?

A. I assume that means it's his copy.

Q. Can you recognize the handwriting on the report?

A. I recognize my signature, thta's [sic] all.

Q. Did you know the others?

A. I did not.

Q. Did you write any notations on the last page, since the first of the fiscal year?

A. No I did not.

Q. I call your attention to paragraph 4. It reads. 'We', and by the way, 'we' are presumably Triton Right?

A. Is correct.

Q. We even paid BPKP auditors working on the audit of our records to determine what is cost recoverable. Is a true statement, right?

A. They are working on the audit to determine what's cost recoverable and we have paid the auditors, that is true.

Q. You apparently paid for their travel expenses when they go to Sumatra, possibly understandable and when they go to the United States to visit Nordell or Triton offices, again that's true when you wrote it?

A. True.

Q. So much goes to the assisting auditors to the legal auditors to . . . – . . . that's true also. Right?

A. True. As I understand it. It is true.

Q. The next paragraph, 'What is worst and this is extremely confidential, is that we paid the auditors in order to have their audit exceptions taken care of. Instead of the $600,000 of audit exceptions we paid them approximately $150,000 to $200,000. Am I reading that right?

A. You are.

Q. Triton basically paid a one hundred and fifty to two hundred thousand dollars to Pertamina auditors to have them forget about it, if you will, $600,000 audit exceptions?

A. As I understood the situation, that was correct.

Q. Now this is a part down here I find particularly intriguing. Paragraph 6, 'Then after these payments are made you must figure out a creative way to document these payments in order for them to be cost recoverable.' Are you saying that the bribes themselves become cost recoverable by papering them over?

MR FLEGLE: Before you answer tht [sic]. Where's 'bribes' in there? There are facilitating payments allowed in. . . . Act, and this witness is not an attorney and I object you using the word 'bribe' and unless it's in here unless that's agreed. As a matter of fact Your Honour –.

MR GRZANKA; He already answered bribed. The first question I asked, bribed, he said, 'yes'.

MR ARMOUR: He didn't say yes. Okay qualify it. . . .

MR WALKER: I know what he said, he said, 'If we paid Pertamina auditors. I am not sure I would call it a bribe'.

MR ARMOUR: That's what he said.

FLEGLE; Just so the records is clear,. . . . the cost but the $600,000 is Nordell's, what happened with Pertamina auditors went to Nordell in the summer of 1989.

MR GRZANKA:

Q Did Nordell tell Triton to pay up the auditors for Nordell. . . . ?

A. No, I didn't talk to Nordell.

Q. Did anybody in Triton ever talk to Nordell about this situation?

A. No.

Q. So that to your knowledge Nordell was never told about this, were they?

A. I have no knowledge on that.

Q. If you wouldn't call this a bribe, what would you call it?

A. I think Mr Flegle characterized it correctly as a facilitating payment.

Q. What do you mean to say here, this part is particularly bad for me'. I hope that at least the Indonesian orders were honest. Were you implying the Indonesian auditors were not honest?

A. That's correct.

Q. So you are understood that in this transaction the Indonesian auditors were doing a dishonest act. Right?

A. That's correct.

Q. Let's go down to paragraph 6 again. 'Is it my understanding that after one of these expediting payments shall we say was made, an invoice was created, a fraudulent invoice? Is that right?

A. That's correct.

Q. And the invoice then was submitted to Pertamina to be cost recoverable. Is that right?

A. That's not correct.

Q. That's not true. Okay. What do you mean by this one here, 'You must figure out a creative way to document those payments in order for them to be cost recoverable'?

A. I meant that the charge had been charged to ENIM then you would have to figure out a way to make it cost recoverable. This payment was not charged to ENIM.

Q. Were there any invoices prepared to cover this $150,000 and $200,000?

A. They were I believe there was, yes.

Q. What did they say?

A. To my understanding it was an invoice from Mr Siouffi's company for acquisition of data on areas in the AMI.

Q. Acquisition of data. I am intrigued by your comment about how you know that these weren't charged to ENIM and write off this last sentence here. 'Unless you are the one on the scene at the time, it is very difficult, perhaps impossible, to tell a real transaction from one that has been faked for cost recovery purposes'. What do you mean by that? –

A. . . . exactly what it says.

Q. Which means that it could be faked and you couldn't tell?

A. On my own, probably not.

Q. You know of anybody in Triton who could tell?

A. The people who were making the payments, or ordering the payments to be made.

Q. How about an auditor? Could an auditor pick up that kind of fraud?

A. It is possible.

Q. Possible? Would it have to be a regular auditor or a fraud auditor?

A. I am not sure would actually show it.

Q. Which would be more likely to show it?

A. I guess a fraud audit.

Q. Did you order a fraud audit to find out exactly how much if any of the invoices had been faked?

A. No. I did not.

Q. Why not?

A. Because in my mind there was no significant fraud going on here. There was an attempt to make things cost recoverable, in a foreign environment where that was necessary sometimes.

Q. Was it your understanding that if an item is not cost recoverable it could not go into the carry?

A. That's not correct.

Q. Did you discuss the problems reflected, if that's the proper way to call it, reflected on the paragraphs 4, 5, 6 with any of the Triton Indonesian management in Jakarta?

A. I did not.

Q. Why not?

A. This was a confidential memo to certain people in Dallas trying to stress that it was a difficult situation, difficult environment to do business in and we needed to make sure that it received proper attention from Dallas.

Q. This situation troubled you, didn't it?

A. Yes it did.

Q. Did you take any steps to correct it?

A. Yes I did.

Q. What did you do?

A. Made plans to start doing an audit as soon as possible.

Q. Did you do the audit?

A. It was to commence in February 1990.

Q. This was written in September, you waited to February to commence the audit. Is that right?

A. That's correct.

Q. Why was that?

A. Different reasons. For instance, we had an audit scheduled in Nepal. Pertamina auditors were already in our office in December and January which prevented my being thereat [sic] the same time.

Q. You didn't want to tell them about this, right?

A. More of a situation where there is no extra room and apparently they knew about it.

Q. They did? Who in Pertamina knew about it?

A. Pertamina auditors.

Q. The auditors who tooked [sic] the money?

A. Yes.

Q. How about the senior people in PBK, could any body knew about it?

A. To my understanding this goes all the way across to the President of Indonesia, since PBK works for the President.

Q. Do you know if the president of Indonesia got any money?

A. I have no idea.

Q. What were the results of this aduit [sic] started in February with respect to these problems?

A. I conducted a regular internal audit looking for internal of controls. The presence of internal of controls. We have written approximately 27, 28 preliminary audit reports. The audit in my mind is not finished because of the arbitration that was filed. We started looking at other areas as well.

Q. Did any of those preliminary reports deal with this particular problem?

A. Which particular problem?

Q. There are two problems as I see. One is the problem of paying to deal with audit exceptions and the other is the problem with documentation, the fake invoices. Did any of your preliminary reports deal with either of those subjects?

A. Not that I recall.

Q. Have you any personal contact with KPMG, the Peat Marwick folks? Do you have any contact with anybody in KPMG in the course of this year?

A. I have sat in on various meetings that they have attended.

Q. To the best of your knowledge have they ever been asked to look into this problem?

A. To the best of my knowledge, no they have not.

Q. Have they even been told about this particular problem down here, faked invoices?

A. To the best of my knowledge, they have not.

Q. In connection with your own activities at Triton Jakarta, this past year invoices have been paid?

A. Yes I have.

Q. In connection with your own activities, sir, at Triton Jakarta, this past year, have you made any attempt to ascertain which invoices if any have been paid?

A. Yes, I have.

Q. Okay, what have you found?

A. In connection with the purchases of rigs, there had been invoices that have been faked.

Q. Anything else? Do you – situation?

A. Not to my knowledge.

Q. How do you go about finding out if the invoice is fake or not?

A. It's very difficult.

Q. How does Mike Callaway go about trying to –?

A. When I ran into it, it was on the home office billings. Things that had been charged, did not agree with the invoices that I saw in Jakarta.

Q. In what respect?

A. We're buying equipment in Dallas. We're also buying equipment in Jakarta looked like the same equipment.

Q. Did you make any attempt to look at the inventory in transit problem that Mr Poulton's working at?

A. Personally, no.

Q. That was something you left up to KPMG?

A. No, I had an assisting auditor working on that area.

Q. Who is that?

A. A consultant named Jack O'neil.

Q. Did you advise Mr O'neil about this potential problem? This problem down here, the fake invoices?

A. I don't recall if I did or not.

Q. This inventory and transit, – conceptually could there be any difference between a high inventory in transit balance and the fake invoices?

A. Conceptually, it's possible.

Q. But it does, you know, either you or anybody in Triton will conduct the –, is that right?

A. That's correct.

Q. I move the introduction of 19 and pass the witness . . .

MR FLEGLE:

Q. Mr Callaway, just a couple of questions. The question is, when is it that you collected the copies and destroyed them?

A. Within two days of the date of the memo.

Q. That's sometime in September 1989?

A. That's correct.

Q. Have you or are you in the process of internal reviews on subjects that we were discussed in this memo?

A. That's correct.

Q. The paragraph four, we discussed on the first page, which says 'Instead of the $600,000 in audit exceptions', those were audit exceptions of what kind of audit. What would they notice, do you know?

A. The exceptions resulted from the Nordell audit in Vancouver. I believe this was referred as Nordell tax audit where Pertamina and BBKB auditors to the exception to home office charges and rent, I mean, technical services, things like that and required taxes to be paid on those.

Q. Oh, I see. At the top of the second page, you were asked questions about the Indonesian auditors. You said 'I hope at least the Indonesian auditors were honest'. Which Indonesian auditors were you talking about at in that sentence?

A. Pertamina, BBKB.

Q. Now, in terms of these payments in paragraph four, the first page of Claimant's '90'. Mr Callaway, how is an oil with the payments on paragraph four that carry or net project investment as it relates to the contract between Nordell and Triton?

A. To my understanding, it did not affect either one on the carry, or on the project investment.

MR ARMOUR:

Q. What was the date of that audit in Vancouver?

A. June, I believe of 1989.

MR GRZANKA:

Q. Just one brief question. Do you know of any of the Triton's costs for expenses in connection with this arbitration have been added to the joint account?

A. I have no personal knowledge right now of that.

Q. Have you seen, you say you don't have any personal knowledge. Have you seen any records which indicate there has been?

A. The joint account, I don't know.

MR GRUNDEM:

Q. I have some questions. You testified that some of these invoices, if I might call them phony invoices, these invoices may have gone through this Dallas fixed asset. Did you not testify that there might have?

A. I testified that I found some problems with fake invoices relating to assets that were purchased by Dallas.

Q. And some of these ones were – and it might have been the double ldeger [sic], or double transactions go to P.T. to the – who elst [sic] they had in Dallas, right?

A. That's correct.

Q. Now, it happens I think that if you add up all these items on the capital assets for Dallas, on – 106 credits, and subtract the credits it comes out it comes out to $150,000, approximately?

A. I believe $150,000 credit or $120,000 credit.

Q. Well, if it is, then I added wrong then I –.

A. Okay.

Q. If it comes out to a credit, The I added wrong because and I was just wondering and if that's the case, I might – but I was just wondering if that could have been the difference?

A. It's difficult to explain something that I've been working out for quite a bit of time. But this was a way to get something cost recoverable through a P.T. company, in Indonesia, for assets that had been purchased in United States and for a period of time, there was a double charge for certain pieces of equipment, which was corrected by vendor draw, paying back the amount that he had been paid to Dallas, less his commission and that credit being passed through to Indonesia. It's very circular and I don't like it, but that's what happened, at the direction of a former employee.

Q. Well, I guess what I'm saying is that, are you saying that these payments to the auditors, Pertamina auditors has not?

A. Has nothing to do with capital assets. The things the auditors are, as I said we're not involved in the carry, they were submitted on invoice from Roland Siouffi company, for acquisition they added to AMI, area of mutual interest. Which is 40 percent Nordell, 60 per cent Triton. An invoice – I do not believe has been paid by Nordell.

MR GRZANKA:

Q. I have a couple of questions now to follow up, by me. Can you testify as a fact that no faked invoice found its way into the carry?

A. I cannot.

Q. Can you testify for a fact that no faked invoice did not impact upon net project investment?

A. I cannot.

Q. No further questions. Your Honour.

MR FLEGLE:

Q. You got this question now, Mr Callaway, in your conversation with Mr Grundem just now, you said something about the 'double invoices' and so forth, were part of the programme [sic] or something being led by a former Triton employee. Who was that former employee?

MR GRZANKA:

Objection to foundation, unless he has personal knowledge, I'm going to get hearsay here.

MR ARMOUR:

Q. If you know. If you don't know who it was, say so.

A. I've seen correspondence.

Q. You saw his correspondence?

A. Yes, sir.

MR GRZANKA: I have no trouble with him saying, what correspondence he saw, and I don't know that he knows who really . . .

MR FLEGLE:

Q. What did you see?

A. I saw a letter from Richard McAdoo to Dallas saying 'I realise [sic] you guys think this is crazy, but this is the way you have to do it in Indonesia'.

Q. Do you have that letter?

A. Personally on me, I do not.

MR ARMOUR: Mr Callaway, I have a question.

Q. Who gave the instructions to make these payments through the Pertamina auditorss [sic], if you know, inthe [sic] Jakarta office?

A. I have only an understanding, Sir. I don't know for a fact but it's my understanding that it was worked out by Richard McAdoo and Roland Siouffi. As a settlement to the auditor.

Q. And that time, what was Mr McAdoo's position?

A. He's general manager.

Q. And what was Mr Siouffi's position?

A. I'm not sure I know what his position is. He's – in my mind, he's only royalty, Your Honour, but he has a lot more power than that.

MR FLEGLE: Officially he was a contract consultant.

MR ARMOUR: But not an officer?

MR FLEGLE: No, Sir. He's never been an officer or employee of Triton.

MR PYBURN: Or a directors?

MR FLEGLE: No Sir. Never been a director of Triton Indonesia. Director of Nordell, an officer of Nordell.

MR ARMOUR: He's still a director?

MR FLEGLE: No.

MR ARMOUR: No, he's not.

MR WALKER: He runs the project for Triton.

MR ARMOUR:

Q. On page two you made a statement, 'I hope that at least Indonesian auditors were honest'. Are you inferring there that some of the other auditors may not be?

A. No, Sir.

Q. Or less than fully honest in their work?

A. I was implying that I – if every Indonesian will steal from you, I at least hoped that the auditors were honest.

Q. We may have further question on this. Will he be available?

MR FLEGLE: Yes, Your Honour. He's going to be here until, the last question is answered.

We'll meet tomorrow at nine o'clock.

ARBITRATION ADJOURNED AT 5:20 PM UNTIL TUESDAY, OCTOBER 23, 1990 AT 9:00 AM.

APPENDIX H

IN THE MATTER OF AN ARBITRATION BETWEEN:

NORDELL INTERNATIONAL RESOURCES LIMITED

Claimant

-v-

TRITON INDONESIA INC.
TRITON ENERGY CORPORATION
-AND-
TRITON OIL (NZ) LIMITED

Respondents

BEFORE THE AMERICAN
ARBITRATION ASSOCIATION

Sitting at Marina Mandarin Hotel, Singapore

9 October 1990

ARBITRATORS: Messrs. G.P. ARMOUR, M.K. GRUDEM, T.D. PYBURN.

APPEARANCES:

For Claimant:
Mr. G.T. WALKER with Mr. M. GRZANKA
Mr. D. GRUNFELD

For 1st & 2nd Respondent:
Mr. J.L. FLEGLE with Ms. L.B. LATCHFORD
Mr. M. MORRIS

3rd Respondent not represented.

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012/90

RICHARD G POULTON, sworn and examined.

MR GRZANKA:

Q. Where do you reside?

A. I am currently living in Jakarta.

Q. What is your address?

A. I live at Bungur Buntu No. 2 Kama Bangka I Kemang, Jakarta, Selatan.

Q. Mr Poulton currently you are employed?

A. Yes I am.

Q. By whom?

A. Price Waterhouse, Siddik Konsultan P.T.

Q. Where are they located?

A. They are located in Jakarta, Seletan. They are the consulting division of Price Waterhouse in Indonesia.

Q. What is your title?

MR ARMOUR; [sic] Why don't we begin with the first question?

MR GRZANKA:

Q. Mr Poulton you are currently employed?

A. Yes.

Q. By whom?

A. Price Waterhouse Siddik Konsultan P.T. which is an Indonesian branch of Price Waterhouse qualified to do business in Indonesia.

Q. What is your title and job description?

A. I am a Senior Consultant with Price Waterhouse.

Q. What do your duties entail?

A. Providing business consulting to Price Waterhouse clients.

Q. Do your duties involve audit?

A. Yes I am currently writing an audit procedures manual from Maxes.

Q. Who is Maxes?

A. Maxes is a. . . . space oil company formerly known as Diamond Shamrock which has and operates a concession called the Southeast Sumatra Concession.

Q. How long have you been employed by Price Waterhouse?

A. Approximately three months.

Q. Where were you employed prior to your tenure at Price Waterhouse?

A. I was employed by Triton Indonesia through an Indonesian company called P.T.Budi Arta Sakti.

MR ARMOUR:

Q. Mr Poulton wait a minute. You were employed by Triton?

A. Originally when I came to work on Triton's behalf I was under contract to Triton, that contract was terminated effective June 1, 1989. Subsequently I was engaged under a service agreement through an Indonesian company named TT Budi Arta Sakti.

Q. Why was that raised at . . . ?

A. In truth I believe that it was done to comply with the manpower restrictions on Triton as far as the number of ex patriates that they could have on their payroll, but it was never really fully discussed with me.

Q. When did you stop work . . .

MR FLEGLE: Your Honour, I guess if it was never fully discussed I seek leave to strike the answer since the witness doesn't have the information to answer the question by his own admission.

MR GRZANKA: The fact that he wasn't . . . doesn't mean he can't have any knowledge of the general circumstances surrounding what the custom and practice is in the industry.

MR FLEGLE: Well, that is a different question, I think, Your Honour, and I think the question of this witness was why was this arrangement made. I guess, implying that Triton had a reason in asking this witness for it. If it is the witness' understanding and we are clear on the record that we are talking about the witness'

understanding, I don't have any problem with it. But it is different in Triton's position.

MR ARMOUR: It implies that it was a special situation with this individual.

MR GRZANKA: Well, I didn't mean to imply that.

MR ARMOUR: That is the way it will look on paper. So why don't you rephrase your question.

MR GRZANKA:

Q. Were you aware of similar situations?

A. Yes, there were various people that worked on Triton Indonesia's project in Indonesia through PT Budi Arta Sakti. Six or seven at least.

Q. When did you say that your contract with Triton itself actually terminated?

A. June 1, 1989.

Q. When did your contract with PT Budi start?

A. Well, I was never really under contract to PT Budi. The way that I understand it was that Triton executed a service agreement between Triton Indonesia and PT Budi Arta Sakti. I do not have a copy of that service agreement.

Q. But is it fair to say that you started working for PT Budi essentially the day after your contract with Triton terminated?

A. Yes, that is correct.

Q. Were you [sic] job duties any different with respect to the operations of your new project while you worked for Triton, immediately before you left Triton and immediately when you started working for PT Budi?

A. In terms of day to day working, no.

MR ARMOUR: Can we just pause for a minute?

MR GRZANKA:

Q. We were talking about the changeover from Triton to PT Budi. Were you [sic] job duties any different from the day you left Triton to the day you started with PT Budi?

A. From a day to day operations standpoint, no, but I would point out that in my termination letter it was stated that my duties under my contract with Triton had been fulfilled. I did take on more accounting type responsibilities as opposed to systems work.

Q. What basically were your accounting responsibilities from, say, June 2 of 1989 on at Triton?

A. I had responsibility for, you know gathering invoices – original invoices to send to the field to use for pricing inventory. I was responsible for the reconstruction of the fixed asset accounts and accounting for inventories in general.

Q. And what were your job duties while you were at Triton?

A. During that time that I was actually under contract with Triton I oversaw and participated in the physical inventory of the warehouse materials at the project site at Kampong Minyak.

Q. When did you start with Triton? When did your contract with Triton commence?

A. 15 March 1989.

Q. By whom were you employed immediately prior to 15 March 1989?

A. Reedy and Bates Corporation.

Q. What did they do?

A. Primarily an offshore drilling contractor but they also had a very substantial exploration production division, a pipeline construction division, a coal division and a research and development division.

Q. How long were [sic] at Reedy and Bates?

A. I spent 13 years with Reedy and Bates.

Q. I presume that over the course of those 13 years your title and job responsibilities changed?

A. Yes, they did.

Q. Could you basically summarize your history, employment history, at Reedy and Bates for us, please?

A. Yes. I was employed by Reedy and Bates August 1 1975 to establish an internal audit function for that company. I was subsequently made manager of internal audit, approximately 2 years after joining Reedy and Bates, and approximately 1981 I was promoted to director of internal audit for Reedy and Bates. In conjunction with Reedy and Bates restructuring and down-sizing, my staff was eliminated and I again took on the title of internal auditor being the sole internal auditor for Reedy and Bates Corporation.

Q. Where did you work immediately prior to August of 1975?

A. Price Waterhouse US firm.

Q. How long were you there?

A. Approximately 3 years.

Q. So that would take us back to approximately 1972?

A. Yes.

Q. What were your job duties there?

A. I was a senior auditor for Price Waterhouse in the New Orleans office.

Q. Where were you employed prior to 1972?

A. I was in the US army.

Q. Are you a college graduate?

A. Yes, I am.

Q. From where?

A. California State College, Long Beach.

Q. What year did you graduate?

A. 1967.

Q. Did you graduate with honors?

A. Yes, I did. I graduated cum . . .

Q. Are you a licensed certified public accountant?

A. I am a certified public accountant in the state of California and the state of Oklahoma.

Q. Do you belong to any professional associations?

A. At this time, you know, I have allowed those to lapse but I have been a member of the American Institute of Certified Public Accountants and the American Institute of Internal Auditors.

Q. Are we up to 51, Mr Pyburn?

MR PYBURN:

A. That's right. Correct.

MR GRZANKA:

Q. I would like to mark as exhibit 51, copy of Mr Poulton's curriculum vitae.

Mr Poulton, I show you exhibit 51. Can you tell me what it is?

A. It is my curriculum vitae which I used in my most current job search.

Q. When did you prepare this particular curriculum vitae?

A. May of 19 – May of 1990.

Q. Does this accurately reflect your employment history through that date?

A. Yes, I believe it does.

Q. I admit exhibit 51 into evidence.

MR FLEGLE: No objection, Your Honour.

MR ARMOUR: So admitted.

EXHIBIT 51 . . . CURRICULUM VITAE

MR GRZANKA:

Q. Let's go back to your – do you know a person by the name of Eric Vaughan?

A. Yes, I do.

Q. Did you ever work with him?

A. Yes, I have. Eric Vaughan was a subordinate to me when I was the director of audit at Reedy and Bates. Subsequently I worked with Eric Vaughan on audit – cut-off audit related to the farm out agreement between Nordell and Triton.

Q. To the best of your knowledge did Mr Vaughan provide Triton with his working papers that were generated from that particular audit?

A. He did. A complete set of his working papers. I might add, prior to clearing them with his client.

Q. How did you come to work for Triton?

A. Mr Vaughan had a contract with Nordell or Veronex to do this cut-off work. It was more work than he felt that he could handle by himself. He knew that I had recently departed employment from Reedy and Bates and asked me if I would be interested in, you know, joining him in Indonesia. I was interested and I joined Mr Vaughan on that project and during the course of the audit work in Triton's offices in Jakarta Triton offered me a contract to come out and assist in straightening out the inventory and fixed asset records.

Q. So while you were auditing Triton's operations for Veronex, Triton made you a job offer. Is that right?

A. That is correct.

Q. Did you accept it immediately?

A. Almost immediately, yes. I did discuss it with Mr Vaughan. I believe that Mr Vaughan had some communication with Veronex and they had no difficulties in that so, yes, it was in a very short term that I did accept it. Within a matter of 2 to 3 days.

Q. This is in March of 1989, right?

A. This would have been in February of 1989, yes.

Q. What was your initial job title with Triton?

A. I was employed as an accounting supervisor, I believe it was. I have a copy of the contract here. I was employed as a senior accounting projects co-ordinator.

Q. What were your job duties?

A. My job duties were to develop, implement and – well, develop, implement an inventory accounting system, reconcile the physical inventories to the financial accounts and make appropriate adjustments. Basically the same responsibilities for the fixed asset accounts.

Q. At the time you started work with Triton were there any particular problems you identified as needing immediate attention?

A. Yes, the inventory and – both the inventory and the fixed asset accounts were in critical need of a great deal of attention.

Let us talk about the inventory first.

Q. What did you see as being a critical need with respect to the inventory accounts?

A. Obtain a correct, accurate physical count of the inventories. See to the pricing of those inventories and adjustments to bring the financial records into agreement with the physical stocks on hand.

Q. What were the problems with the fixed asset accounts that you envisaged?

A. Basically the fixed asset accounts did not exist other than in the financial statements. There were no supporting files as to what was included in the fixed asset accounts. There was no ongoing analysis of the fixed asset accounts. In truth, the only fixed asset records that existed were the monthly financial statements.

Q. Now were these problems problems [sic] that resulted from Nordell's lack of documentation that was completed when it was operating on the project?

A. That is correct.

Q. Were those problems exacerbated by what you – in your opinion, were those problems exacerbated by Triton's operations?

MR FLEGLE: Objection. Leading.

MR ARMOUR: Sustained.

MR GRZANKA: Does it suggest an answer? The question was, in your opinion does it. I will rephrase the question. A yes or not [sic] answer is not a leading question.

MR FLEGLE: Well, I think the question is, did you have an opinion. If that is what he wants to ask, that is fine with me.

MR GRZANKA: Well, I will reframe it.

Q. In your opinion were any of these problems exacerbated by what you saw as Triton's operations?

A. In my opinion, yes, there were things that Triton, you know, had in their procedures that, you know, did lead to a further deterioration.

Q. Can you give us some of those examples?

A. Well, the most critical example had to do with their method of paying for inventory charges and charging them into the inventory accounts. Specifically when I arrived in March of 1989 it was Triton's practice to process invoices for payment based on procurement personnel verifying receipt of goods, which is a very, very serious internal control matter.

Q. Why do you say that?

A. Well, in terms of internal control it is very critical to the concept of a segregation of duties – I am going to place it first in terms of, you know, in the United States and then I will, you know, expand, you know, on how that translates to operations in Indonesia. Critical to management control and separation of duties is that the people who are responsible for contacting vendors and making commitments for the procurement of goods are not involved in verifying receipt leading to payment for goods. In the United States this would be a very, very serious internal control matter. In a country such as Indonesia where problems with incorrect payments being invoiced for goods not received is a very, very common problem. I considered their method of approving payments prior to independent confirmation of goods to be a

gross violation of very, very basic internal control principles.

Q. Let me see if I understand what you are saying. You are saying that your concern was that the same people at Triton who were saying, "We bought this stuff", were the same people who were saying, "We received it"? Is that the problem?

A. That is correct.

Q. Did you attempt to implement procedures to correct that problem?

A. Yes, I did. In connection with the physical inventory that was conducted throughout April and May of 1989 I immediately requested that an in transit account be established as a means to control payments that had been made for goods that had not been confirmed as received by personnel in the warehouse function at Kampong Minyak independent of the procurement function.

Q. Now you were in the room yesterday when I asked Mr Murphy questions about the inventory account?

A. Yes, I was.

Q. You heard his answer that it involved basically recording movements of goods somewhere between Jakarta and Sumatra?

A. Yes, I did.

Q. What do you think of that answer?

MR ARMOUR: Of his answer?

MR GRZANKA:

Q. What do you think of Mr Murphy's answer to my question about what the inventory account really involved?

A. Well, in essence, you know, that is the truth but I think that it is, you know, an extreme over-simplification of the matter. It did not just involve, you know, materials that were moving from Jakarta to Kampong Minyak. It also – it overlooked the critical aspect of independent verification of receipted goods prior to processing payments to vendors.

Q. Now, had there been inventory in transit accounts with respect to the project before you implemented this one?

A. At some time there had been an inventory in transit account used but at the time that I arrived that account had been closed up to a zero balance and was not reflected in the financial statements.

Q. So you basically resurrected that account, is that right?

A. Resurrected that account for basically a threefold purpose. First, to address, you know, the serious serious [sic] internal control deficiency. Secondly, to provide a means to accumulate documentation to track prices for the individual line items that are included in that inventory. Third, to provide a means to cut off, in accounting terms, the book records to match with the physical inventory records.

Q. When you say "track prices", what do you mean by that?

A. Well, at the conclusion of the inventory that was completed May 31, 1989, you know, at that point I was relatively satisfied that we had a reasonable count of the physical stocks. But there was no means to apply invoices [sic] prices to those physical stocks. There was no means to price the inventory, you know, to reflect its costs on a cost basis.

Q. So in other words you couldn't tell – you knew what inventory you had but you couldn't tell how much you paid for it. Is that a fair assessment?

A. I could not match vendor prices, the prices that Triton had paid, for that inventory. Some of the inventory also included purchases that had been made by Nordell. There was no means to trace the line items in that inventory from the physical inventory to the vendor invoices to establish the correct amount paid as a means for pricing the inventory in accordance with general accepted accounting principles.

Q. Let's talk about the inventory in transit account a little bit further. What was the original balance in the account when you first saw it?

A. Zero.

Q. And did it grow – did that balance grow over time?

A. Yes, it did. The first reflection in the financial statements for the inventory in transit account was reflected in the May 31 financial statements and that balance continued to increase and I do not have the records so I cannot really provide you exact figures but I can give you a general pattern of the trend. That account

began to accumulate charges, you know, in the range of 200 to 250,000 a month from May through September of 1989 and in October of 1989 the balance roughly doubled. I am going to say between a million and two million hit that inventory in transit account in the month of October 1989.

Q. Why was that?

A. It was the result of an accrual entry.

Q. Do you know who made that accrual entry?

A. I do not, no.

Q. Do you know what types of items were included in this accrual entry?

A. I think it included both inventory type items and capital transactions and I would point out that the inventory in transit account was set up to be specifically that, an inventory in transit account. I made specific comments that it was not to include capital transactions.

Q. Why was that?

A. It was meant to be a control over inventory and part of the problems that, you know, both Nordell and Triton experienced was a blur between inventory and fixed assets, capital.

Q. Let's just backtrack a little and talk about these various accounts. Had there come a time early in your employment by Triton that an adjustment to the fixed asset account was suggested?

A. Early in my employment?

Q. Yes?

A. Yes, as part of the provisions of the farm out agreement between Nordell and Triton there were certain entries adjusting the capital accounts that were proposed in relation to certain work that Mr Vaughan and I had performed.

Q. Were there certain adjustments to the inventory account?

A. There – the inventory account itself – the warehouse inventory account itself had been adjusted in that a physical inventory was taken as of September 1, 1988. Approximately November of 1988 there was an adjustment to the inventory account taking up a shortage. I believe it was roughly three-quarters of a million dollars that was written off to reduce the inventory value with the offset being taken to the cost pool.

Q. Did you have a discussion with anyone about whether in fact that reduction should be taken to the cost pool?

A. I had very serious concerns about that reduction being taken at the cost pool from the standpoint that Triton being a new operator I felt that it was inappropriate to take that to the cost pool, that Pertomina auditors would disallow it as cost recovery and I was rather insistent that it be reversed and taken out to a balance sheet account until such time as it could be analyzed and determine what composed that adjustment.

Q. With whom did you have – did you express those concerns with anyone else at Triton?

A. Yes, I spoke extensively with Mr Keever about that particular problem, and also with Mr Murphy.

Q. What was Mr Keever's response?

A. Ultimately it was agreed and an entry was recorded to reverse that entry and to take it out of the cost pool.

Q. Do you have any information as to whether that entry was ever included in the carry?

A. That I cannot tell you.

Q. Let's go back to the October doubling, if you will, of the transit account. Did you have any concerns about that particular phenomenon?

A. I most certainly did. Which phenomenon is this, I am sorry?

Q. The doubling of the inventory in transit account of October?

A. Yes, I was, you know, very concerned. It impacted, you know, in an area where I had direct responsibility. That fact that it – you know, the fact that the source of that was an accrual created significant problems for me because being an accrual it was, you know, at least a month to two months before I would be able to actually track the invoices to determine what comprised that increase. And management, you know – Triton's management was also quite concerned about it as well.

Q. Who was?

A. Mr Keever in particular.

Q. What were his concerns as expressed to you?

A. He indicated that he was getting a great deal of you know, pressure from Dallas to get that account cleared.

Q. Did you attempt to investigate what had caused this jump in accruals in October – the jump in the inventory in transit account in October?

A. No, I had identified it with an accrual.

Q. Did you ever hit upon precisely what the accrual items were?

A. Not making up the particular entry that, you know, impacted the transit account, I was concerned about it but on the other side of the coin, as it represented an accrual I did not know whether it really represented physical goods that, you know, had been purported to have been delivered to Kampong Minyak. I could only real [sic] deal with payments that had been made. That being the point that there definitely should have been physical goods.

Q. As of October did the balance in the inventory in transit account change over time?

A. It continued to increase November, December, yes.

Q. What was that balance at about the time you left?

A. Between 4 and 5 million dollars.

Q. Do you consider that a big number for an inventory and transit account?

A. Yes, it is.

Q. Would it cause any particular audit problems?

A. Yes, it would be a red flag to an auditor.

Q. In what respect?

A. Charges in the transit account are basically pending a proper accounting, you know, as to – particularly in this case where both capital and inventory transactions were being ploughed into the account, as to whether it was inventory or whether there were fixed assets that had not been accounted for.

Q. Did you make any efforts between, say, October of 1989 and April of 1990 to reconcile the items covered in the inventory in transit account?

A. Commencing about the beginning of December that is virtually all that I worked on.

Q. Did you have discussions with other people at Triton about this particular account?

A. Yes, I did.

Q. Do you recall a discussion on March 9, 1990?

A. Very clearly.

Q. Who was present at this meeting?

A. Mr Keever, Mr Murphy, Mr Bill McClure, Mr Mike Callaway and a Mr Jack O'Neill.

Q. Who is Mr O'Neill?

A. He was a contract auditor who was engaged by Triton Energy Corporation, I believe.

Q. What was the purpose of the meeting?

A. The purpose of that meeting was to discuss a resolution of the in transit inventory account.

Q. Do you remember the substance of that meeting?

A. As I recall, Mr McClure proposed a very simplistic solution to accounting for the inventory in transit account whereby all of the inventory accounts being inventory in transit, the inventory suspense account which represented the entry that I insisted be removed from the cost pool, all be closed into the warehouse inventory account; the physical inventory that was in progress at Kampong Minyak priced and the difference between the total of all financial statement inventory accounts and the physical inventory being written off directly to the cost pool.

Q. What was your concern about that, if any?

A. I had two concerns very specifically about it. First of all, it completely overlooked a proper accounting for the capital nature transactions that had been taken in the inventory account and, secondly, the same concern that I had over the initial entry that had been written off to the cost pool that it would not pass Pertomina audit muster.

Q. Did you express those concerns at this meeting?

A. I did express that concern and Mr McClure stated that Triton had in the past bought the audit from Pertomina and that they would continue to do so to get this transaction approved by Pertomina. I have to say that I was shocked by that treatment. Having been a director of internal audit for a New York stock exchange company,

in my mind, you know, discussing as a means to implement accounting policy – and I understood the word "buy the audit" to mean bribe Pertomina auditors. To me it represented an illegal transaction, the proposal of an illegal transaction.

Q. Who made that statement again?

A. I believe that Mr McClure did but Mr Callaway, being present and being the audit management for Triton Energy – also a New York stock exchange company – I was quite surprised that he did not raise a serious objection.

Q. Was there any objection raised by anyone at that meeting to this course of conduct?

A. No.

Q. Now, you actually resigned from Triton only a few weeks later – from PT Budi only a few weeks later, is that correct?

A. It was about 7 weeks. When they proposed this plan you know, I had very serious professional concerns but at the same time, you know, I had been working on a means to clear the transactions out of in transit properly and I had hopes to, you know, continue my work and complete enough of it to, you know, prevent this from happening.

Q. Did you hope to be able to reconcile the accounts without these procedures you call "buying the audit" having to take place?

A. That was definitely my concern. Understand this, what had been proposed, you know, from my professional judgment was an illegal solution. It related to work that I had been engaged on and been working on for a year. You know, I felt definitely exposed professionally.

Q. When you left PT Budi were you fired or did you resign?

A. I resigned.

Q. Why did you resign?

A. Well, from the time that the March 9 meeting took place until early April, I returned to Kampong Minyak and continued to process journal entries to clear in transit at Mr Keever's direction, providing him weekly status reports as to what entries I had made and what progress I was making. When I returned to Jakarta on 10 April I believe it was, I determined that none of the entries, you know, that I had been sending down to Jakarta had been booked and that they were still planning to do this glossing solution to the in transit account. One other thing that transpired at Kampong Minyak, Mr McClure came and had conversation with myself and a different Barry Jones – Mr Barry Jones who was the manager at Kampong Minyak – whereby he proposed fabricating accounting source documents as a means to completely bypass the inventory accounts and reverse all of the accounting for inventory that had been prepared since Triton had taken over as operator. When I returned to Jakarta and found out that in fact they had booked none of the clearance of in transit entries, I then began to – I knew that I had to resign and it was just a matter, you know, of timing. You know, when I would resign.

Q. When you talking about fabricating of documents, what specifically are you talking about?

A. Mr McClure came and he came to Kampong Minyak and he proposed that instead of using warehouse issues, you know, as the source document for accounting for inventory issued from the warehouse whereby there is a signature by the party that receives the goods, a proper transfer of the goods to operation, that instead they would take all of the receiving documents that had been processed from inception of Triton's operatorship, cost those out, code them – which, you know, he had requested me to do the coding and I had refused. He subsequently requested Mr Barry Jones to do the coding on those receiving reports. Mr Jones and I discussed it. I had very serious objections to it because, you know, it did not really represent what happened and ultimately Mr Jones refused to participate in the scheme.

Q. When you say "code it", what do you mean?

A. That they would look at what materials had been received. They would attempt to say that it was production equipment, drilling equipment and, you know, charge it directly to those cost centers.

Q. Would the receiving documents have contained any coding originally?

A. No, none whatsoever.

Q. So let me see if I understand. What Mr McClure was proposing was to ignore the actual warehouse records about where the equipment had in fact gone, but to go back to the original documents which showed how they got to the warehouse, code in where Triton thought

they should have gone or would have gone, simply write that in and use that as the record of where they ultimately did go? Is that right?

A. Yes, that was what was ultimately proposed, yes.

Q. Did you express any concerns about this procedure to anybody at Triton?

A. Barry Jones and I discussed it extensively.

Q. How about people in Jakarta?

A. I believe that that particular scheme had been abandoned when I returned to Jakarta because Barry Jones refused to participate in it. But, you know, that was the only part that I objected to that was, you know – that procedure had been abandoned but they were still planning to close all the inventory accounts into one account and write the thing off to the cost pool. At the time I resigned I warned Mr Keever that, you know, he was in great peril were he to proceed with this ill-conceived scheme.

Q. What was your life like once you came back to Jakarta in the weeks before you actually resigned?

A. Well, it was made, you know, very evident to me that I really was not wanted around there, that – there were steps taken

* * *

APPENDIX I

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ARBITRATION • MEDIATION • MINI-TRIAL
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November 15, 1990

Nordell International Resources Ltd.
c/o Veronex Resources Ltd.
-and-
Triton Indonesia, Inc., and
Triton Energy Corporation; Triton
Oil (NZ) Limited

VIA FAX 72 T199 0204 90

Triton Energy Corporation
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Dear Parties:

The Arbitrators in the above-captioned matter have requested that additional information be submitted by Monday November 19, 1990, no later than 5 p.m. The

requested information deals with three exhibits, copies of which are enclosed for your convenience.

Exhibit ZZZ, page one (1), states " Revenue: Amount Due From Nordell (cash) 329,053." How was this amount obtained? What was paid for cost recovery and investment credit? What should be paid? Now does this exhibit tie-in with exhibit II?

On exhibit VVV, page two (2), bottom left, clarification is needed with regards to the four lines which are indicated on the enclosed copy. What, if anything has been duplicated? Please explain.

Thank you again for your cooperation and courtesy in this matter.

Sincerely,

/s/ Becky Pelo
Becky Pelo
Tribunal Administrator

cc: Gordon T. Walker, Esq. (via fax. w/ encl.)
Michael R. Grzanka, Esq. (via fax. w/ encl.)
Daniel Grunfeld, Esq. (via fax. w/ encl.)

APPENDIX J

BRACEWELL & PATTERSON

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[Additional Addresses Omitted In Printing]

November 19, 1990

Ms. Becky Pelo
American Arbitration Association
443 Shatto Place
Los Angeles, California 90020-1781

Re: AAA Case No. 72 T199 0204 90 Nordell International Resources Ltd., and Triton Energy Corporation, Triton Indonesia Inc., and Triton Oil (N.Z.) Limited

Dear Ms. Pelo:

In response to your letter of November 15, 1990, Triton Indonesia Inc. and Triton Energy Corporation provide the following information:

1. Exhibit ZZZ

Mr. Calloway's testimony concerning Exhibit ZZZ is contained in transcript pages 1820-1824. Copies of this testimony are attached to this response.

The specific calculation for "amount due from Nordell (Cash) $329,053" is particularly shown on page 3 of Exhibit ZZZ. A copy of Exhibit ZZZ is attached to this response. The allocations of cost oil and investment credit

oil under the caption "Revenue Paid NIR" are taken from actual payments by Triton to Nordell. The calculations on VVV would not affect this payment.

To calculate the "Payable to Nordell" portion of cost oil and investment credit oil on ZZZ, Mr. Calloway took the Nordell cost recovery total on VVV of $4,522,321 (through February 1990), subtracted the February 1990 amount of $309,756, and arrived at the total of $4,212,565.

According to Mr. Calloway's calculations, the amount paid to Nordell for cost oil recovery and investment credit oil through January 1990 was $4,544,404.75. The amount that should have been paid to Nordell for cost oil recovery and investment credit oil for the same period was $4,212,565.

Exhibit ZZZ cannot be directly "tied in" with Exhibit II, since Exhibit II reflects the gross amounts paid to Triton by Pertamina. Exhibit II was prepared for the Panel, at the Panel's request during the Arbitration, by Mr. Calloway, expressly for the sole purpose of identifying for the Panel the total amounts of revenues received by Triton from Pertamina to date.

Finally, I have attached a commentary by Mr. Calloway explaining his calculation on Exhibit ZZZ. If the Panel desires further information, please advise.

2. Exhibit VVV

Mr. Calloway's testimony concerning this portion of Exhibit VVV is contained in the transcript at pages 1798-1801. Copies of these pages of the transcript are attached for the Panel's reference.

Additionally, Mr. Calloway's remarks, attached to this correspondence, further explain the "duplicated" amounts. Mr. Calloway explains each of the adjustments in his testimony and his memorandum.

I have enclosed three copies of this letter and attachments for distribution among the arbitrators. If further information is necessary, please advise immediately.

Very truly yours,

Bracewell & Patterson

/s/ Jim L. Flegle
JIM L. Flegle

JLF/mar

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Q. Alright, you see the three debits, two or three columns over? A. Sorry I don't, I'm not sure if I am following you.

Q. Revenue, these numbers right here? A. Okay.

Q. Are those numbers right there in the bottom? A. These numbers are in the totals at the bottom.

Q. Okay A. Under revenue column, Nordell cost recovery, and Triton cost recovery.

Q. Alright, now, are the numbers – do the numbers in the revenue column, and the Nordell cost recovery and Triton cost recovery, actually reflect February 1990? A. They do.

Q. So those dollars actually came in the door? A. That's correct.

Q. So in terms of your total revenue for the period through February 1990, Nordell cost recovery for the period through February 1990 and Triton cost recovery, those numbers are still correct? A. I believe that's correct, yes.

Q. When you say in the column Nordell's cost recovery, $4,305,574, are you telling the panel that that is what Nordell actually recovered? A. Can I see your schedule?

Q. I'm sorry I've got Mr Gros Dubois' copy. I've got this wrong –

MR ARMOUR: You are reading the wrong –

MR FLEGLE: Q. I am sorry. In your cost recovery Nordell cost recovery, you have a total of $4,522,321? A. That's correct.

Q. Now what does that number reflect? A. That would be Nordell's share of cost recovery from October 1988 through the end of February 1990.

Q. Is that your calculation of what it should have been based on this document? A. That's correct.

Q. Alright, now that calculation – okay. And then the Triton cost recovery column reflects $5,047,282, and is that what your calculations on 'VVV' reflect what it should have been? A. That's correct.

Q. And you are satisfied that even after the confusion that I've just caused, that these are still accurate? A. Those three columns are still accurate yes.

Q. Then I have asked you, Mr Callaway, to scratch out some summaries using documents that have already been admitted in the case, as well as your calculations on 'VVV'. I'm [sic] am going to show you – appropriate remark – 'ZZZ'. We offer them, Your Honour, we offer 'YYY' as the calculation of the head office overhead. . . .

MR ARMOUR: Q. And so you're offerring [sic] at this time? 'ZZZ' a thing called JIB, 11/89 and page is somewhat . . . called revenue and cash basis. A. It's correct.

Q. Do these pages reflect your work, Mr Callaway? A. They do.

Q. You are responsible for it? A. I'm responsible for it.

Q. In terms of that document, did you use what has been marked as Claimant's Exhibit '54', for the KPMG Nordell deficit at 939? A. I did.

Q. Let's see if I can get a copy of that. If the panel would total your numbers on your summary, they would find the negative $663,402 at the bottom of the page marked Appendix 3, partner Nordell? A. That's correct.

Q. I've got it here in front of you.

Now KPMG I believe the testimony said, used the carry termination date of November 3 or thereabouts 1989. How does your summary take the KPMG number on '54' and adjust it for the carry termination date you found and 'VVV', your calculation? A. Started with the KPMG number at the end of September 1990 and I adjusted it for, in my opinion, refund Nordell on the joint interest billing for November 1989.

Q. And that's – before we go too fast here – that is the number $415,140. You have a sheet attached to the front cover of Exhibit 'ZZZ' that explains how you got there? A. Yes I do.

Q. Now, if you turn to that page and explain to us how you got the JIB adjustment of $415,140,? A. On p.2 of 'ZZZ', the amount billed to Nordell for November 1989, on the joint interest billing was $498,168. Divided by 30 days, we were spending $16,605 a day. I multiplied that by the number of days after my determination of the, obligation being met met [sic] on the carry and determined that they should have been billed for $83,028, so I subtract the $83,000 from the amount that they were billed and arrived at a refund due to them of $415,000.

Q. $415,140 the JIB? A. That's correct.

Q. Now the next line, it says 'revenue: amount due from Nordell (cash) and you have got a credit number of $329,053? A. That's correct.

Q. Now that number is calculated on the last page of the . . . which is revenue cash basis. Can you explain to members of the panel, how you got to the bottom line refund? A. Okay. Nordell was paid for the period October

'88 through January '90 for cost oil investment credit oil at $4,544,404.75. In the same period of time, they were paid on profit oil $491,672.04 and on those payments we had deducted $13,600 which we should not have deducted, making total payments to Nordell for that period of time for revenue due them of $520,476.79. $5,022,476.79.

Q. Now then, let me stop you right there. In those calculations, were you using the actual payments to Nordell as a basis for this calculation? A. That's correct.

Q. And then when you're saying that the AMI deduction there, of $13,600, you're saying that in addition to the actual payments of Nordell, $13,600 is still owed them and you stuck that in to what they should have received? A. That's correct.

Q. The next set of calculations is what? Payable to Nordell? A. This is based on my model 'VVV' going through the same period of time, October 1988 through January 1990. Cost oil investment, credit oil, it should have been paid on cash basis as $4,212,565. Profit oil is different because we came up with some problems on our internal audits.

Q. Let me just stop you right there. You said profit oil is different because you came up with some problems. Am I hearing you saying that because of your problems, the profit oil calculation for Nordell instead of being 491,600 change, it should have been $480,058? A. That's correct.

Q. The next line is deductions and you've got zero? A. That's correct.

Q. Can you tell us how the rest of this page works? A. Okay, the amount payable to Nordell for that period of time is calculated tobe [sic] $4,693.81 so subtracting the amount payable from the amount actually paid, we are due $329,052.19 back from Nordel [sic] for over payment of revenue.

Q. Alright sir, going back to 'ZZZ' the first page, how then is your calculation of the carry and the calculation of the revenue due Nordell on a cash basis in 'VVV' affect the conclusions that KPMG reached in its report, Claimant's 54? A. Basically it's an adjustment to KPMG September 30, an amount of $663,000 down to a credit due or amount due from Nordeli of $577,000.

Q. So even if the panel adopts your calculation, 'VVV' for determination of carry based on – comparing that calculation with KPMG numbers, you have arrived at the conclusion that Nordell still owes, as of September 30, 1990, $577,315? A. That's correct.

Q. Now are any of these numbers – did you have any effort to add interest in your calculations to 'ZZZ'? A. There are no calculations to add interest to 'ZZZ'.

Q. I have marked as two other Exhibits, Mr Callaway, A1 and A2. Are A1 and A2 your calculations? A. They are.

Q. And are they calculations for interest on cash call number six and cash call number seven? A. That's correct.

Q. Can you tell us how you calculated A1 and A2?

MR GRZANKA: Can I see them first?

MIKE CALLOWAY'S EXPLANATION OF NOVEMBER 16, 1990 RESPONDING TO PANEL'S REQUEST OF NOVEMBER 15, 1990

Exhibit ZZZ:

Amount obtained from Lotus 123 worksheet (attached) which compares amounts paid to Nordell for their share of cost oil recovery, investment credit oil, and profit oil for the period from October 1988 through January 1990 with amounts calculated as should have been paid to Nordell for the same period.

Exhibit II shows Investment Credit and Cost Oil Recovery (columns 3 and 4 respectively) allowed each month by Pertamina. For example, in June 1989 Investment Credit of $5,583.10 was allowed and Cost Oil Recovery of $510,763.00 was allowed. The amounts paid to Nordell for Investment Credit and Cost Oil Recovery are determined by Nordell's equity percentage at the end of the month in which payment is received from Pertamina. Using June 1989 again, $516,346.10 was distributed using 45.1643% for Nordell or $233,204.06. The 45.1643% is from Exhibit 106 dated 10-22-90. Exhibit II shows, in column 11, that $516,346.10 should be distributed and that $516,346.00, in column 12, was distributed to the parties.

Exhibit VVV:

1. During the Interim Period, Nordell paid for operations as follows:

October 1988	$151,331.00
November 1988	168,669.00
	$320,000.00

Nordell submitted an invoice at the end of February 1989 for $320,000.00 less the remaining amount of Nordell's obligation to spend $587,000.00 towards the Creditor List. In October and November 1988, Nordell had contributed $395,000.00 (rounded from $395,009) toward the Creditor List leaving a remaining obligation of $192,000.00. The invoice submitted by Nordell showed $320,000.00 less $192,000.00 or $128,000.00. Triton paid Nordell $128,000.00 on March 5, 1989.

Later in March 1989, Triton made what was called an omnibus payment to Nordell in the amount of $1,857,782.66. This payment covered cost oil recovery, investment credit oil, profit oil, Nordell cash in bank and other items. Among the other items were payments for Interim Period operations of $151,330.49 and $275,511.00 for October and November 1989, respectively. These items were considered duplicate payments by the auditor and handled as investment for Triton and a reduction of investment for Nordell. As you can see, October 1989 on the Nordell invoice was $151,331.00 and on the omnibus payment was $151,330.49. November 1989 on the Nordell invoice was $168,669.00 and on the omnibus payment was $275,511.00 or a difference of $106,842.00. This was an increase in payables (an accrual) during the interim period which Nordell's auditors did not adjust when they developed the support for the omnibus payment made by Triton at the end of March 1989.

2. The $250,000.00 item was considered a duplicate payment because in the Farmout Agreement Triton was obligated to pay Nordell $250,000.00 under Article 7.1. This was not to be considered Triton investment toward

the "Carry." Triton paid $250,000.00 to an account controlled by R. McAdoo and R. Siouffi in December 1988 to settle this obligation to provide operating funds. As part of the omnibus payment at the end of March 1989, Triton paid $250,000.00 for Art. 7.1 of the FOA. This duplicate payment was handled as Triton investment towards the "Carry" and a reduction of Nordell's investment.

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* * *

project investment. So it was not reflected in that category and we set up a separate column to keep track of the amounts that should be reimbursed and the reimbursements.

Q. So assumption no. 2 there applies directly down to the column that says "reimburseable to Nordell by Triton"? A. That's correct.

Q. Now the third and final assumption, Mr Callaway, I say the final assumption – the third listed assumption at least, reads 'duplicate payments in March 1989 treated as additional Triton investment reducing in A/R investment'. Now let me ask you two questions together. The first question is, can you take us to the page where that applies, and the second question is can you describe to us what it was and why you. . . . ? A. It's on p.2 of 'VVV'.

Q. So we go down to the set of number at the bottom of the page 2? A. That's correct. Show payments

to reimbursing Nordell for the interim period operations $320,000.

Q. That's the second line of payments for the month of March? A. That's correct. Nordell submitted an invoice to us for $128,000 which we paid, I believe on March 5th/6th.

Q. Why have you got $320,000? A. Nordell is supposed to have spent $320,000 as shown in the first two months. 151,331 in January; 168,669 in February.

Q. You mean in October and November? A. Excuse me, yes October and November.

Q. So if we go back to the first page and look at the reimburseables [sic] to Nordell by Triton column we find for IP/NIR payments for operations $151,331 in October, 168.669, in November and the total of those two would be . . . $320,000 which is on the second line of March? A. That's correct.

Q. I am sorry, the issue is –

MR ARMOUR: Q. Excuse me, where does that appear on p.1? A. It shows the cost pool balance at the end of November 1988 under the category' reimburseable [sic] to Nordell by Triton $320,000.

MR FLEGLE: Q. You will find it relatively easily. . . . $151,331 on 168,669 and the total there of $320,000. Why is it that there is a difference in March between the $320,000 that you have got in the columns and $128,000 credit which you have got reimburseable [sic] to Nordell by Triton? A. According to the terms of the farm out agreement, Nordell was obligated to spend $587,000 towards the payment of the creditor list obligations. In

those two months they did not spend $192,000, so it was deducted from their bill that they sent us and we owed them $128,000.

Q. Now is this something that you knew or is it something that you saw in terms of the transaction of the parties? A. There was one invoice from Nordell to Triton.

Q. So in terms of the $320,000 just numerically for a second, under payments of reimburseables [sic] for operations $320,000, you have put a credit of $128,000 reimburseable [sic] to Nordell by Triton column. And the next line you says [sic], 'remaining in our creditor obligations 0000 and a credit of $192,000. Is that the remaining portion of $320,000? A. That's correct.

Q. And what does that line reflect to you? A. The amount that had not been spent by Nordell of their obligation to spend $587,000 towards the creditor list.

Q. Now is that the obligation of spending the August and September revenues? A. That's correct.

Q. The next lines says, 'duplicate payments – I/P operations $151,330' and you have got it debited in two columns and credited in two. Can you explain that for us? A. Part of the $128,000 that we paid that we then in March was also included on their next invoice, or next payment that we made to them. So 151,330 showed up twice, on the invoice that we paid in March and on the payment wemade [sic] at the end of March. The $275,000 is – by the way, some of these numbers were worked up by Mr Eric Vaughan for Nordell. The 151,000, 275,000 were worked out by Mr Vaughan. The 275,000 was the amount supposedly spent in November 1988 by Nordell

and it was also included in the interim period payment for $128,000 except that there was a problem there. It aplpears [sic] that the $275,000 was not actually spent because one of Mr Lafferty's letters shows the 275,000 less 106,000 for increased payables.

Q. You are talking in shorthand to me. Maybe Mr Grudem understands, but can you explain what did you just said in a little bit longer – ? A. I am sorry. Mr Vaughan prepared supporting information that would allow Triton to pay Nordell for interim period operations and for certain subsequent periods. Mr Vaughan failed to recognize that we had already paid for the interim operations in the interim period, when he worked out his numbers. So the 151,000 that was shown in March was also paid as part of the 320,000 less the 192,000 that we paid at the beginning of March. It is very complicated and I still get a little confused myself. The 275,000 is also related to the interim period. Its for November 1988. Mr Vauhan [sic] shows $275,000 cash out the door by Nordell. Mr Laferty's letter shows, for that month, $106,000 increase to payables which brings the 275,000 back down to the 168,000 that I show in November 1988. I am not sure if I've explained it yet. It is difficult to explain, in my opinion there is. – A duplicate payment there.

Q. The next line says, 'duplicate payment for Article 7.1, $250,000' What does that line represent? A. Under Article 7.1 we were obligated to send Nordell's 250,000 that was non refundable. We did that when we sent it to Mr Mcadoo's [sic] account for payment of operating expenses. Mr Vaughan's invoices are numbers that were used to make payment to Nordell at the end of March included the same $250,000 and the same reference to

Article 7.1. While the first payment of $250,000 does not apply to the carry, it was my opinion that the second payment should.

Q. Did you find anything that made you believe the $250,000 was anything more than being the same $250,000 twice? A. No. Not at all.

Q. I want to get to the bottom line in just a minute Mr Callaway. Do you mind just walking through the first month there and explaining to us what each of the line items are in the month? A. You are talking about October 1988?

APPENDIX K

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[Additional Addresses Omitted In Printing]

November 30, 1990

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Los Angeles, CA 90020-1781

Re: Case No. 72 T199 0204 90
Nordell International Resources Ltd. -and- Triton Energy Corporation, Triton Indonesia, Inc. and Triton Oil (N.Z.) Limited

Gentlemen:

This letter is Claimant's formal response to the "additional submission" made by Respondents on November 19, 1990. That "additional submission" concerned Respondents' Exhibits VVV and ZZZ, and it consisted of (i) a two-page letter from Mr. Flegle, (ii) a three-page, unverified, written "statement", purportedly "from" Mr. Calloway, and (iii) various exhibits and attachments (including a so-called "Lotus 1-2-3 worksheet" which had not previously been introduced).

I. GENERAL RESPONSE TO MR. FLEGLE'S TWO-PAGE LETTER

Mr. Flegle's letter invites this honorable panel's attention to only nine pages of the transcript of Mr. Calloway's oral testimony at the arbitration hearing. Claimant respectfully submits that such a reference is grossly incomplete and that, in order to *fully* understand Exhibits VVV and ZZZ, it is necessary to review *all* of Mr. Calloway's oral testimony concerning those exhibits (especially the testimony which he gave on *cross*-examination concerning same).

Claimant, of course, already has submitted an *extensive* brief on this very subject (*i.e.*, Claimant's "Arbitration Brief Re Testimony of Michael Calloway"). In the interest of brevity, Claimant will merely restate *one* of the significant points made in that earlier brief; to wit, *all* of the numbers contained in Exhibits VVV and ZZZ are – by Mr. Calloway's own admission – preliminary, tentative, hypothetical, and subject to audit (with the dual effect that (i) Mr. Calloway, himself, admitted that he could not attest to the accuracy of *any* such numbers and (ii) *all* such numbers have *no evidentiary value whatsoever*).

II. CLAIMANT'S "GENERAL" OBJECTIONS TO THE UNVERIFIED, ADDITIONAL STATEMENT (INCLUDING THE NEW "LOTUS 1-2-3 WORKSHEET") PURPORTEDLY "FROM" MR. CALLOWAY

Nordell respectfully objects to the entirety of the written statement allegedly provided by Mr. Calloway on each and all of the following grounds:

A. The statement is "unverified" (*i.e.*, not presented under oath); and, since this honorable panel already has excluded *verified* written statements, Claimant respectfully submits that the same ruling must apply to Mr. Calloway's "unverified" written statement.[1]

B. It contains information (including a new exhibit) with respect to which Claimant has *never* been given an opportunity to cross-examine Mr. Calloway (or any other Triton witness); and

C. It clearly constitutes an attempt, by Respondents, to belatedly introduce evidence which should have been (but which obviously was not) presented during the arbitration proceeding itself. In short, Respondents failed, during the arbitration hearing itself, to produce evidence sufficient to satisfy their own burden of proof concerning the propriety and accuracy of Exhibits VVV and ZZZ, and they should not be given a subsequent opportunity to attempt to remedy this particular failure.

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[1] Indeed, Mr. Calloway did not even sign the written statement which is attributed to him. The *only* factor which links Mr. Calloway to that document is the *title* of same; and Claimant would be very much surprised if, in fact, Ms. Latchford and/or Mr. Flegle did *not* have a substantial role in preparing that particular writing.

III. CLAIMANT'S "FOUNDATIONAL OBJECTIONS" TO THE WRITTEN STATEMENT PURPORTEDLY "FROM" MR. CALLOWAY

One issue which is purportedly "addressed" in the unsigned, unverified statement purportedly attributable to Mr. Calloway involves the question of whether Respondents did (or did not) make "duplicative" payments to Nordell. Respectfully, Claimant asserts that Mr. Calloway is not competent to testify about this issue, as he has no personal knowledge of why (or even whether) any of the payments in question actually were made.

That is, it is important to remember that any analysis of the relationship between potentially "duplicative" payments and the calculations found on Exhibits VVV and/or ZZZ involves *two* distinct sub-issues: (i) whether any "duplicative" payments were, *in fact*, made, and (ii) *if so*, whether any such "duplicative" payments are reflected in any of the numbers found on Exhibits VVV or ZZZ. Mr. Calloway could be competent to testify about the *second* of these sub-issues; but he is totally *in*competent to testify about the first.

The *only* competent evidence which may be adduced with respect to the first of these sub-issues (*i.e.*, whether particular payments were, *in fact*, "duplicative" of other payments) involves (i) the *actual* records of the payments themselves *and* (ii) the testimony of the persons who tendered and received same. Testimony "about" those underlying records would violate the "Best Evidence Rule" (and, in any event, would be *hearsay*); and testimony from someone who, like Mr. Calloway, was *not*

personally involved in the transactions in question, is simply incompetent.

Mr. Calloway contends, of course, that he reviewed various *unspecified* records (which are *not* in evidence), and that it appeared to him that there were two instances in which an amount which may have been paid at one point in time by Triton was "equal to" another amount which may have been paid, perhaps at a different time, by Triton. That is the *only* basis for Mr. Calloway's *conclusion* that such payments are "duplicative"; and, quite simply, that is an insufficient basis for reaching that conclusion.

A perfect example of this phenomenon involves equal payments made under a simple installment loan. Simply put, even if the borrower under such a loan were to pay the same amount twice, at different times, this would be insufficient – in and of itself – to establish that such payments were really "duplicative" of one another. In order to truly ascertain whether such "duplication" existed, it would be necessary to *introduce into evidence* the applicable payment documentation (*e.g.*, invoices, payment stubs, checks) *and* to hear testimony from the *payor* as to what he (she) actually intended to be paying.

Here, of course, Respondent has *never* introduced the underlying documentation (which, of course, is necessary to satisfy the so-called "Best Evidence Rule"); and Respondents have never presented any witness who could testify from personal knowledge that *any* payments made to Nordell actually were "duplicative" of any earlier payments (as opposed to being the payment of separate obligations).

Indeed, Respondents have not even adduced competent evidence that any of the payments in question *actually* were made.

These problems are further compounded by Mr. Calloway's earlier testimony that he has *not* yet completed his "audit" of Respondent's various books and records and that he *still* needs to confer with Mr. Keever and others in order to verify the accuracy of his (Mr. Calloway's) admittedly preliminary numbers and assumptions. Clearly, when it is unclear whether the persons actually involved in making the alleged payments in question will (or will not) confirm Mr. Calloway's tentative opinions concerning "duplication", and where (by Mr. Calloway's own admission) such persons have not yet even been consulted by him, Mr. Calloway's tentative opinions should not, can not, and must not be given any weight whatsoever.

In short, there is no foundation for any of Mr. Calloway's statements as to whether "duplicate" payments were (or were not) in fact made. If Triton wanted to satisfy *its* burden of proving such "duplication", Triton should have presented someone who could say something more than, "Tentatively, the amounts in question are similar [or even identical]".[2] Further, to the extent

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[2] In any event, Nordell contends that no "duplicative" payments were, in fact, made to it by Triton. If this panel so desires, Nordell is willing to make a detailed, evidentiary presentation on this point; but, in light of the fact that it is Triton which bears the burden of proof on this issue, and in light of the additional fact that Triton clearly has not satisfied that particular burden, Nordell will not now belabor this point.

that Exhibit VVV assumes that any "duplicate" payments *were* made (which it does), and to the extent that such an assumption impacts any of the calculations found in Exhibit VVV (which it does), that Exhibit must be viewed as legally incorrect. To use the appropriate legal jargon, Exhibit VVV "assumes facts not in evidence".

IV. FOR ANY NUMBER OF REASONS, THE CALCULATIONS SET FORTH IN EXHIBIT ZZZ ARE "JUST PLAIN WRONG", INDEED, THE VERY FIRST NUMBER FOUND ON THE FIRST PAGE OF EXHIBIT ZZZ (I.E., "[S663,402]") IS, ACCORDING TO TRITON'S OWN LATEST ANALYSIS, INCORRECT AND BASED UPON AN INCORRECT ASSUMPTION

This honorable arbitration panel could (and should) reject the entirety of Exhibit ZZZ for the various reasons earlier set forth in Claimant's above-referenced "Arbitration Brief Re Testimony of Michael Calloway". Alternatively, the panel could (and should) reject that Exhibit because its calculations are unsupported by, and actually are inconsistent with, (i) the "true facts", as established by Claimant's extensive evidentiary showing, (ii) the express language of the FOA, the JOA, and the Rehabilitation and Secondary Recovery Contract with Pertamina (for example, such contracts make very clear that Nordell was (and is) to be considered the "Operator", for contractual purposes, during the so-called "Interim Period" and that Nordell was (and is) entitled to the *immediate* reimbursement of, and to interest on, any overpayment(s) made by it with respect to cash calls and/or

JIB's) and (iii) the express language of the binding agreements reached in Bangkok during the so-called "Op Com No. 2".

Nevertheless, there is even a stronger, independent reason for this panel to reject Exhibit ZZZ; and this reason involves the very simple, very obvious fact that *the most elemental number set forth in that particular Exhibit is, according to Triton's own records and officers, incorrect and based upon an incorrect assumption.*

More precisely, Exhibit ZZZ begins with the following line:

> "KPMG's Nordell deficit @ 9/30/90: [$663,402]"

This particular number (*i.e.*, "[$663,402]") is one of only *three* numbers which are used, on the first page of Exhibit ZZZ, to calculate the total amount which *Triton claims is owed by Nordell;* and, as Exhibit ZZZ *expressly* indicates, this very significant number is derived from calculations done by persons *other than* Mr. Calloway himself (*i.e.*, KPMG).

As shall be demonstrated hereinbelow, these particular KPMG calculations are completely useless. They are based upon unaudited numbers; they derive from assumptions and legal interpretations which are not the result of KPMG's independent evaluation (but, rather, are assumptions and interpretations given to, and inalterably imposed upon, KPMG by Triton itself); *and they are based upon a "carry completion date" which is incorrect, even by Triton's own (and Mr. Calloway's own) current analysis.*

We shall address these points in reverse order.

First, in concluding that, as of September 30, 1990, Nordell allegedly had *underpaid* its cash call and JIB "obligations" by $663,402, KPMG *assumed* (without any independent evaluation, and only as the result of Triton's initial instructions to do so) that Triton had completed its "cash carry obligation" on November 3, 1989 (See Claimant's Exhibit 54). In fact, Mr. Calloway, himself, disagrees with this assumption; Mr. Calloway has opined that this "cash carry obligation" was *not* satisfied until at least November 25, 1989; Mr. Calloway's position was legally adopted by Triton itself in the so-called "Exhibit 106" to Triton's earlier-filed Interrogatory Responses.[3]

This disagreement means, quite simply, that the first line of the first page of Exhibit ZZZ is grossly inaccurate and that (even according to Triton's own contentions) the number set forth on that line must be dramatically altered *in Nordell's favor.*

More particularly, both sides to this arbitration *agree* that the question of when Triton's "cash carry obligation" was actually satisfied impacts *significantly* upon the question of damages: to wit, the *later* the "cash carry completion date", the *more* Nordell has *overpaid.* Further, this impacts such that, if one were to assume *only* that the "cash carry" was satisfied in *late* November (as Triton itself now contends), rather than in *early* November (as KPMG *assumed*), the amounts which Nordell *should have been* charged for cash calls and JIB's diminished *dramatically* (*i.e.*, by hundreds and hundreds of thousands of

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[3] Of course, Claimant contends that this "cash carry obligation" was not satisfied until February of 1990, at the very earliest; but Claimant shall not now reargue this point.

dollars) – and this is so even if one were to accept, *arguendo*, *all* of *Triton's* other assertions in this case.

This point is well illustrated by comparing the two different schedules which comprise Exhibit 44. Both of these schedules reflect Mr. Murphy's attempts to ascertain, according to Triton's own numbers and assumptions, whether the "joint venture partners" to the agreements here in issue had overpaid (or underpaid) their respective cash call and JIB "obligations" over time. In the first of these schedules, Mr. Murphy assumed a "cash carry completion date" of *early* November, 1989; and in the second, he assumed a "cash carry completion date" of *late* November, 1989.

Based upon this single difference, Mr. Murphy's "due to/due from" calculations differ dramatically. For example, in the first of his Exhibit 44 schedules (which, like the KPMG Report, assumes an *early* November, 1989 "cash carry completion date"),[4] Mr. Murphy concludes that, as of September, 1990, Nordell supposedly had "*underpaid*" its cash call and JIB "obligations" by $526,457; but, in the second of his schedules (in which Mr. Murphy, like Mr. Calloway, assumes a *late* November, 1989 "cash carry completion date"), Mr. Murphy concludes that, as of September, 1990 – AND EVEN IF YOU USE *ONLY* TRITON'S

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[4] The calculations found in Exhibit 54 (the "updated KPMG Report") closely parallel those found in the first half of Exhibit 44. Since *both* calculations were, essentially, simple mathematical calculations based upon *Triton's* own unaudited numbers as to what was demanded and what was paid, this should come as no surprise.

NUMBERS AND CALCULATIONS – Nordell actually had *overpaid* its cash call and JIB "obligations" by $54,034.

Thus, this relatively small change in the assumption used with respect to the "cash carry completion date" had an enormous impact upon Mr. Murphy's calculations of the amounts "due to/due from" Nordell (*i.e.*, a difference of $580,491).

Obviously, if one were to change the number found on the first line of Exhibit ZZZ from a Nordell debit to a Nordell credit (as Exhibit 44 suggests), or even if one were merely to reduce the amount of the alleged Nordell "debit" by $580,491, such actions would – in and of themselves – have a *significant* impact upon the "bottom line" expressed in that same Exhibit; and this impact *clearly* would benefit Nordell![5]

As a result, if, according to *Triton's own* current position, the first line of the first page of Exhibit ZZZ is

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[5] Again, *all* of Mr. Murphy's calculations are based upon *Triton's* numbers, *Triton's* presumptions, and *Triton's* contractual interpretations. Thus, because Nordell contends that many of Triton's numbers, many of Triton's assumptions, and many of Triton's contractual interpretatons [sic] are incorrect, Nordell respectfully submits that Mr. Murphy's calculations grossly understate the subtantial [sic] amounts due and owing from Triton to Nordell.

Nevertheless, the foregoing analysis concerning Exhibit 44 *is* important for one very simple reason: to wit, it clearly demonstrates that the first line of the first page of Exhibit ZZZ is grossly inaccurate – even if you use Triton's own current position as to when the "cash carry" was completed (*i.e.*, late November of 1989) and even if you use all of Triton's own numbers, calculations, and assumptions concerning the validity of all cash calls and JIB's.

overstated, how can the remainder of that document have *any* probative value?

The answer is obvious: it cannot.

Further, it should be noted that the "[$663,402] number" is, in and of itself, an "unaudited", foundationless number, based *solely* upon information, assumptions, and contractual interpretations prepared *exclusively* by Respondents themselves. KPMG *never* made any attempt to analyze whether *any* of Triton's demands for additional advances (whether such demands took the form of cash calls or joint interest billings) were reasonable, appropriate, and/or authorized by the terms of the contracts here in issue. Nor did KMPG [sic] verify any of the computations used by Triton to "calculate" such demands.

Rather, KPMG did nothing more than undertake the simple mathematical tasks of (i) adding up all of the "demands for additional advances" actually made by Triton upon Nordell (as reflected in *Triton's* own books and records, and as computed exclusively by *Triton* itself, using *Triton's* own numbers, assumptions, and contentions) and (ii) thereafter comparing that number with the aggregate of the payments actually made by Nordell in response to such "demands", either directly or through Pertamina payments which were not remitted to Nordell (again, using only *Triton's* books, records, numbers, assumptions, and so forth, and doing so without any independent audit or analysis).

In essence, *all* KPMG did, in Exhibit 54, was say, "If you add these unaudited numbers, you will get this unaudited total; and if you subtract these other

unaudited numbers, you will get this unaudited remainder".[6]

The first line of the first page of Exhibit ZZZ, therefore, is a classic example of "bootstrapping": to wit, (i) Triton provided KPMG with various numbers showing *only* the amounts which *Triton* claimed Nordell was "obligated" to pay (and KPMG made *no independent evaluation* as to the propriety of any such numbers or "obligations"), (ii) Triton also gave KPMG certain immutable directions as to various legal and contract interpretation issues (and, again, KPMG made no independent evaluation of *any* such issues), (iii) as a result, KPMG provided Triton with an "unaudited", extremely "qualified", and *essentially meaningless*, arithmetic calculation which said (Surprise!), "Nordell paid less than Triton demanded", (iv) Triton took that calculation and inserted it (*without* any underlying detail, explanation or analysis) into Exhibit ZZZ[7], and (v) Triton therefore argues, "See, Nordell owes us money".

Clearly, this approach "begs the question" (indeed, *all* of the questions) involved herein. Exhibit ZZZ is a

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[6] One need not be a certified public accountant to perform this "mindless", mathematical task; and Claimant respectfully submits that Respondents elected to use KPMG for this task solely for the purpose of hiding the true insignificance, and the pure sophistry, of such calculations.

[7] Indeed, KPMG refused even to produce the work papers upon which its calculations were based.

mathematical "house of cards" which Triton has erected through an unsubstantiated "sleight of hand".[8]

Finally, it is important to remember that the first line of the first page of Exhibit ZZZ includes, as part of the amount allegedly due from Nordell to Triton, various amounts (i) whose payment has been *excused as a matter of law* by Respondents' own contractual breaches and/or (ii) which relate to a particular JIB which was *never even submitted to Nordell.*

The first of these points has already been addressed, in great detail, by Nordell (and such arguments shall not now be reiterated); and the second point specifically

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[8] Of course, and as Claimant repeatedly has asserted (and as opposing counsel repeatedly has refused to acknowledge), Nordell vigorously disputes the propriety, and amount, of *all* of the cash calls and JIB's made upon it. Among the reasons for Nordell's contentions in this regard are, *inter alia*, Triton's failure to take "cash balances" into account when issuing cash calls and JIB's, Triton's insistence on including "non-cash items" (such as "working capital movements" in excess of $5,000,000) in its JIB calculations, and Triton's failure to reduce expenses when confronted with significant shortfalls in production and revenues.

In response to all of this, Triton failed to produce even a single witness who admitted to having been responsible for (or even admitted to possessing detailed knowledge about) the specific procedures and computations actually used by Triton to calculate the amounts demanded in its cash calls and JIB's. When questioned about such details, *every single one* of Triton's witnesses – Mr. Murphy, Mr. Calloway, Mr. Keever, Mr. McClure, and all of the KPMG witnesses – "pointed the finger elsewhere" and said, in essence, "you'll have to ask someone else". Unfortunately, that "someone else" was never produced by Triton.

involves the so-called "July JIB" purportedly "due" in September of 1990. Simply put, that particular JIB was *never* submitted to Nordell for payment; and, therefore, it cannot be said that Nordell refused to pay (or even was "obligated" to pay) that "secret" amount.

Since KPMG *did*, however, include that "phanton" amount in the calculation which has found its way into the first line of the first page of Exhibit ZZZ, that line is in error for this reason as well.

V. THE AMOUNT SHOWN ON THE SECOND LINE OF THE FIRST PAGE OF EXHIBIT ZZZ (I.E. "$415,140") IS INACCURATE

Nordell contends, of course, that Triton did not satisfy its "cash carry obligation" until February of 1990, at the very earliest. As a result, Nordell claims that *all* cash calls and JIB's which concern the period prior to that actual date were (are) improper; and Nordell further argues that it should be entitled to a *full* refund of all payments made (under protest) in response to all of those "early" demands for additional advances.

Thus, to the extent that the second line of the first page of Exhibit ZZZ does not recognize Nordell's entitlement to a refund of the payments made by it with respect to *all premature* cash calls and JIB's, and to the extent that the same line recognizes such an entitlement for *only a*

portion of Nordell's November, 1989 JIB payment, the number set forth on that line is woefully inaccurate.[9]

Beyond all of the foregoing, however, it must be noted that Mr. Calloway made at least two errors – one mathematical, the other methodological – in his computation of the second line of the first page of Exhibit ZZZ.

First, the *second page* of Exhibit ZZZ shows how Mr. Calloway calculated the amount found on the second line of the first page of Exhibit ZZZ. As that second *page* clearly reveals, Mr. Calloway *mistakenly* assumed that Nordell's share of the November, 1989 JIB was only $498,168, when IN REALITY that amount should have been $580,491 – the total amount which Nordell *actually paid* in response to Triton's *two* demands for cash for November, 1989 (*see, e.g.*, Exhibit 33; *see also*, Exhibit 44, page 1, line 8 of the section marked "January, 1990"). It seems that Mr. Calloway simply "forgot" about Triton's

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[9] Further, and beyond the fact that Triton improperly made "demands for additional advances" *before* the actual completion of the "carry period", it is important to remember that *Triton's* efforts to "quantify" the parties' respective cash call and JIB "obligations" – which computations are reflected in both of the *first two lines* of Exhibit ZZZ – are based upon the grossly incorrect assumption that Nordell had to pay whatever billings Triton made to Nordell, whether or not those billing were justified by cash requirements of the Project (which they weren't), and whether or not Triton itself was contributing to the Project (which it wasn't).

Of course, Nordell has done its own calculations with respect to the various cash call and JIB demands made upon it; and those calculations (which are reflected in Claimant's Exhibit 40) show that Nordell actually has *overpaid* by – and therefore is entitled to a refund of – $897,838.

additional "demand" for $82,323; this error directly impacts upon his computation of the number found on the second line of the first page of Exhibit ZZZ; and (surprise!) this error inures to Triton's benefit and Nordell's detriment.

Clearly, this error in Mr. Calloway's "base number" taints the entirety of his calculations on this particular point; indeed, it further taints the accuracy of *all* of Mr. Calloway's calculations.

Secondly, as shown on page 2 of Exhibit ZZZ, Mr. Calloway's calculations *assume* that, during the month of November, 1989, Triton made *equal* expenditures on each and every day of that month. Clearly, such an assumption does not reflect reality. Therefore, instead of using a "shorthand" methodology of this type, Mr. Calloway should have reviewed *actual*, daily expenditures for the month of November, 1989, and used those actual expenditures to calculate *exactly* when Triton's "carry obligation" *actually* was satisifed (if, as Mr. Calloway asserts, it *really* was satisfied sometime during that particular month).

VI. THE AMOUNT SHOWN ON THE THIRD LINE OF THE FIRST PAGE OF EXHIBIT ZZZ (I.E., "[$329,053]") IS MEANINGLESS

Claimant's response to the third line of the first page of Exhibit ZZZ is very easy to articulate: *i.e.*, that third line is entirely meaningless, as it does nothing but compare two sets of *Triton's own* calculations (*see* page 3 of Exhibit ZZZ).

More particularly, the first of these two sets of calculations reflects *Triton's original* position as to how items such as "net project investment" and the parties' respective "shares" of "Pertamina remittances" should properly be calculated. In fact, such calculations set forth the amounts actually paid (according to *Triton's* records) to Nordell in the form of "Pertamina remittances"; and, therefore, this first set of calculations reflects nothing more than the amounts which Triton orginally [sic] *admitted* it owed to Nordell.

Nordell, of course, always has contended that such calculations were incorrect and resulted in a gross *underpayment* of the amounts actually due and owing to it; but, of course, neither Nordell's contentions nor the economic consequences of those contentions are reflected anywhere in this first set of calculations.

Nor are such matters reflected in the *second* set of calculations which Mr. Calloway used to calculate the number found on the third line of the first page of Exhibit ZZZ. Once again, this *second* set of calculations reflects *only* Triton's numbers, *only* Triton's assumption, and *only* Triton's contractual interpretations; and this second set of calculations is even more restrictive than the first. That is, through this second set of calculations, Triton seeks to renege on its earlier admitted positions, and its earlier relied-upon calculations; and Triton likewise attempts to use this *second* set of calculations to contend that, "in reality", it had "mistakenly" *overpaid* Nordell with respect to Nordell's "share" of "Pertamina remittances".

Please excuse Claimant's cynicism; but it seems "all too convenient" that this alleged "overpayment" argument was raised, *for the very first time*, (i) at the arbitration proceeding, (ii) on a hand-written (*i.e.*, hastily prepared) sheet of paper and without *any* supporting documentation, and (iii) only *after* it had become abundantly clear (through Mr. Murphy's "surprise" production of Exhibit 44) that, in the absence of such an argument, Triton clearly would be obligated to pay substantial sums to Nordell. Indeed, Claimant asserts that this "coincidence" is reminiscent of the machinations referenced in Exhibit 7, the unsigned memorandum which was written by Mr. Murphy, Mr. McClure, or Mr. Keever and which concerns conversations as to how Triton might fraudulently bill Nordell for sums Nordell simply did not owe.

In any event, Nordell respectfully submits that Triton should *not* benefit from a comparison of two of its own calculations. Such a comparison does nothing more than illustrate differences in the inconsistent and vascillating [sic] positions taken by Triton; it does not even address the claims made by Nordell.

Finally, it is important to note (i) that the *second* set of Triton's calculations is, by Mr. Calloway's own admission, preliminary, tentative, and subject to further modification and audit, and (ii) that the *first* set (which Triton now seeks to abandon) reflects a course of conduct *voluntarily* adopted by and implemented by Triton itself. Triton can not be allowed to *continually* change positions to Nordell's significant detriment.

In sum, Claimant suggests that it would be far more appropriate to analyze the calculations done, by Claimant

itself, with respect to the significant difference between the amount of "Pertamina remittances" actually paid to Nordell and the amount which should have been paid under Nordell's arguments. This analysis is found in Exhibit 70.

VII. CLOSING POINTS

Beyond all of the foregoing, Claimant would like to end this "letter brief" exactly where it began: *i.e.*, with a reference to Claimant's earlier-filed "Arbitration Brief Re the Testimony of Michael Calloway".

As stated therein, all of the numbers found in Exhibit VVV are *undeniably* tentative, hypothetical, incorrect, and are such that Mr. Calloway, himself, simply would not (and could not) attest to their accuracy. Further, to the extent that Exhibit ZZZ contains numbers which are derived from those found in Exhibit VVV (and, since Exhibit VVV reflects Triton's calculations concerning issues such as the "carry", the parties' respective "shares" of "net project investment", and the parties' respective "shares" of "Pertamina remittances", such a derivative relationship clearly does exist), Exhibit ZZZ is "tainted" by the same problems which "taint" Exhibit VVV.

VII. CONCLUSION

For each and all of the foregoing reasons (and for those additional reasons set forth in Claimant's earlier-filed "Arbitration Brief Re Testimony of Michael Calloway"), Claimant respectfully submits that all of the numbers contained on Exhibits VVV and ZZZ have no

probative value and must be ignored. Further, Claimants respectfully submit that *Nordell* is the party properly entitled to relief, and that a proper computation of Nordell's damages is found in Claimant's Exhibit Post-Hearing Memorandum, Attachment "A", page 62.

Respectfully submitted,

CADWALADER, WICKERSHAM & TAFT

By /s/ Michael R. Grzanka
Michael R. Grzanka

MRG/mwr

VIA FACSIMILE

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APPENDIX L

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December 3, 1990

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Nordell International Resources Ltd.,
c/o Veronex Resources Ltd.
-and-
Triton Indonesia, Inc., and Triton
Energy Corporation, Triton Oil (NZ)
Limited

VIA FAX AND REGULAR MAIL

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Dear Parties:

The arbitrators in the above-captioned matter, having considered the communications and documents recently received in this matter, hereby order as follows:

1) The arbitrators will not consider or order on any alleged factual information contained in letters or documents transmitted to them dated November 20 through November 30, 1990, and hereby order that no future submissions occur.

2) The panel orders, and repeals its previous order that all communications and requests for information between the parties cease and desist, both in Indonesia and the United States, except requests submitted by and between Michael R. Grzanka, Esq., counsel for Nordell Int'l Resources, Ltd., and Jim L. Flagle, Esq., counsel for Triton Indonesia, Inc., et al.

Said order is effective immediately. Should you have any questions please contact the undersigned.

Sincerely,

/s/ Becky Pelo
Becky Pelo
Tribunal Administrator

cc: George P. Armour, Esq.
Mr. Thomas D. Pyburn
Mr. Marvin Grudem, CPA